

# TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 335.

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RAILROAD COMMISSION OF LOUISIANA AND WALTER  
GURON, ATTORNEY GENERAL OF LOUISIANA, AP-  
PELLANTS.

TEXAS AND PACIFIC RAILWAY COMPANY, ST. LOUIS,  
IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,  
AND KANSAS CITY SOUTHERN RAILWAY COMPANY.

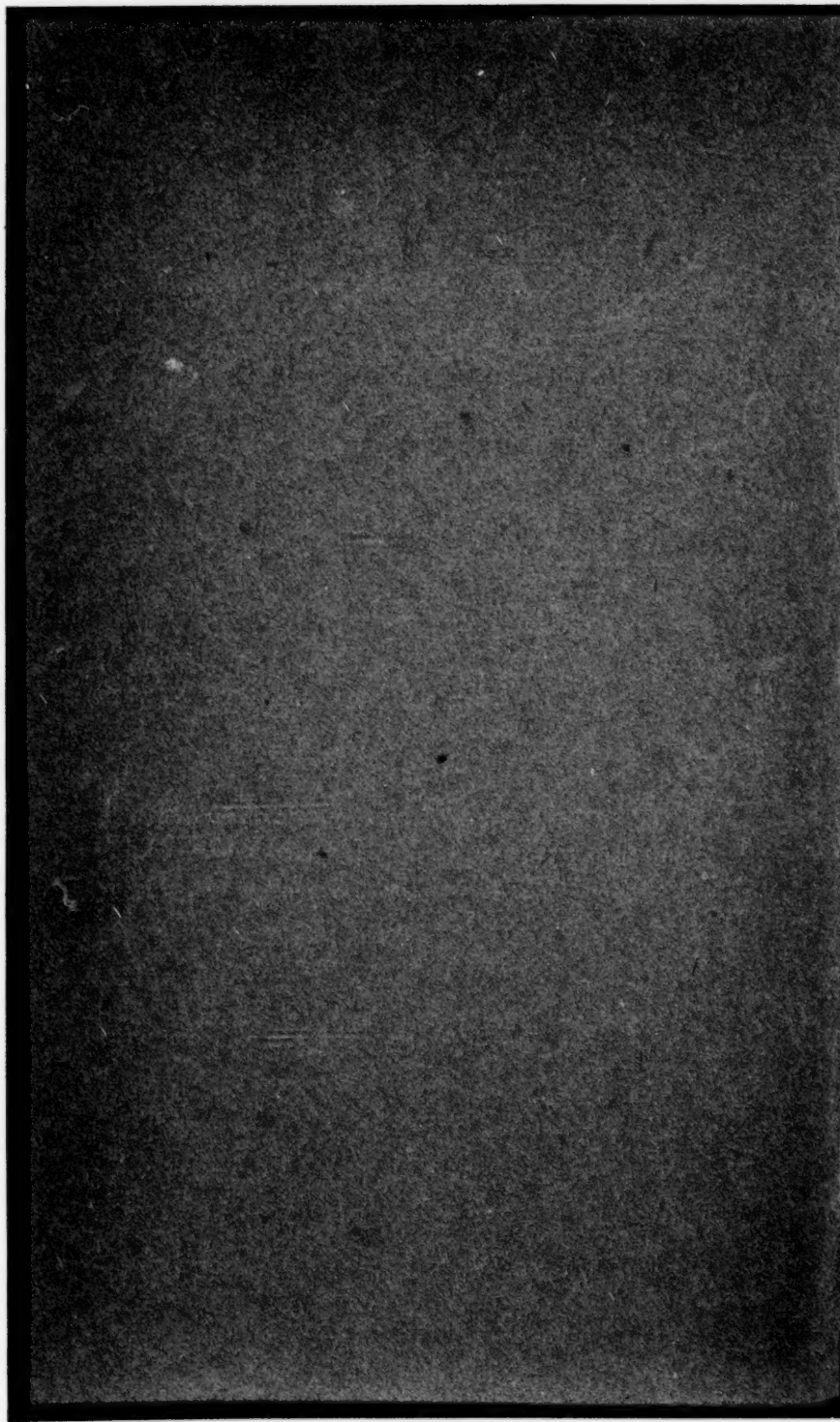
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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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FILED JUNE 26, 1913.

(22,744.)



# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 668.

RAILROAD COMMISSION OF LOUISIANA AND WALTER  
GUION, ATTORNEY GENERAL OF LOUISIANA, AP-  
PELLANTS,

v8.

TEXAS AND PACIFIC RAILWAY COMPANY, ST. LOUIS,  
IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,  
AND KANSAS CITY SOUTHERN RAILWAY COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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a

*Transcript of Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA et al., Appellants,  
versus

THE TEXAS & PACIFIC RAILWAY COMPANY et al., Appellees.

Appeal from the Circuit Court of the United States for the Eastern  
District of Louisiana.

[Original Record Filed January 5, 1911.]

U. S. Circuit Court of Appeals. Filed Jan. 14, 1911. Charles  
H. Lednum, Clerk.

1 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern Dis-  
trict of Louisiana, Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY COMPANY, THE ST. LOUIS, IRON  
Mountain & Southern Railway Company, and The Kansas City  
Southern Railway Company, Appellees,

versus

THE RAILROAD COMMISSION OF LOUISIANA and WALTER GUION,  
Attorney General of Louisiana, Appellants.

Hon. Walter Guion, Attorney General of Louisiana, and E. How-  
ard McCaleb, Esquire, for Defendants and Appellants.

Messrs. Howe, Fenner, Spencer & Cocke and Bernard J. Mayer;  
Messrs. Hudson, Potts & Bernstein; Messrs. Alexander & Wilkinson,  
for Complainants and Appellants.

Appeal from the United States Circuit, Eastern District of Louisi-  
ana, Baton Rouge Division, to the United States Circuit Court of  
Appeals for the Fifth Circuit, Returnable Within Thirty (30)  
Days from the Thirtieth (30th) Day of December, A. D. 1910.

*Transcript of Appeal.*

2 Transcript of record pages 1 to 66 on first appeal in Cause  
No. 1537, Railroad Commission of Louisiana, et al., vs. The  
Texas & Pacific Railroad Company, et al.

\* \* \* \* \*

*Setting Down of Demurrer Generally.*

Extract from the Chancery Order Book.

55. B. R. D.

TEXAS &amp; PACIFIC RAILWAY CO. et al.

vs.

RAILROAD COMMISSION OF LOUISIANA.

FRIDAY, *February 16th*, 1906.

The complainants come and set down generally the demurrer filed herein, January 6, 1906.

(Signed)

HOWE, SPENCER &amp; COCKE,

*Sol'rs.**Order Fixing Demurrer by Consent.*

Extract from the Minutes.

November Term, 1905.

NEW ORLEANS, *Saturday, February 17*, 1906.

Court met pursuant to adjournment.

Present—Hon. Charles Parlange, District Judge.

No. 55.

TEXAS &amp; PACIFIC RAILWAY COMPANY

vs.

RAILROAD COMMISSION OF LOUISIANA.

By consent of counsel for the respective parties, it is ordered that the demurrer herein filed be fixed for hearing on Saturday, February 24th, 1906, at 11 o'clock a. m.

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*Order Continuing Demurrer by Consent.*

Extract from the Minutes.

November Term, 1905.

NEW ORLEANS, *Saturday, February 24*, 1906.

Court met pursuant to adjournment.

Present—Hon. Charles Parlange, District Judge.

No. 55. B. R. Div.

TEXAS &amp; PACIFIC RAILWAY COMPANY, et als.,

vs.

THE RAILROAD COMMISSION OF LOUISIANA.

It is ordered by the Court that the hearing of the demurrer of the defendant herein, be continued indefinitely by consent of the counsel for the respective parties.

*Mandate of United States Circuit Court of Appeals for the Fifth Circuit.*

Filed April 30, 1906.

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Circuit Court of the United States for the Eastern District of Louisiana, Greeting:

[SEAL.]

Whereas, lately in the Circuit Court of the United States for the Eastern District of Louisiana, before you or some of you, in a cause between The Texas & Pacific Railway Company, the St. Louis, Iron Mountain & Southern Railway Company and the Kansas City Southern Railway Company, complainants and the Railroad Commission of Louisiana and Walter Guion, Attorney General of the State of Louisiana, respondents, the following decree was made and entered, to-wit:

“The Texas & Pacific Railway Co., et al., vs. The Railroad Commission of Louisiana, No. 55, in Equity. This cause came on at former day to be heard upon the application of the complainants for a preliminary injunction herein, and was argued by counsel for the respective parties and submitted to the Court; whereupon, on due consideration thereof, it is now ordered by the Court, for the reasons this day filed, that a preliminary injunction issue herein as prayed for in the bill of complaint, on complainants’ giving good and sufficient bond and surety in the sum of five thousand (\$5,000) dollars to be approved by the Court.

It is further ordered that Wm. Grant, Esq., be and he is hereby appointed Special Master in Chancery in this cause, and he is empowered and directed to hear and take all testimony and evidence in the case and to report fully on all questions of law and fact in this cause.

New Orleans, La., January 25th, 1906.

(Signed)

CHARLES PARLANGE,

*U. S. Judge.”*

as by the inspection of the transcript of record of the said Circuit Court which was brought into the United States Circuit Court of Appeals for the Fifth Circuit by virtue of an appeal sued out by The Railroad Commission of Louisiana, and Walter Guion, Attorney General of the State of Louisiana, agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of November, in the year of our Lord one thousand nine hundred and five, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the said transcript of record and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said Circuit Court in this cause be and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the appellants the Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, and the surety on the appeal bond herein, George Gordes, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of said Circuit Court.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of April, in the year of our Lord one thousand nine hundred and six.

(Signed) CHARLES H. LEDNUM,  
*Clerk of the United States Circuit Court  
of Appeals for the Fifth Circuit.*

(Indorsed:) No. 55 B. R. Div. United States Circuit Court of Appeals, for the Fifth Circuit. No. 1537. November Term, 1905. The Railroad Commission of Louisiana, et al., vs. The Texas & Pacific Railway Co., et al. Mandate.

*Motion and Order Filing Demurrer.*

Entered and Filed November 3, 1906.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

No. 55.

TEXAS & PACIFIC RY. CO. et al.

vs.

RAILROAD COMMISSION.

On motion of Walter Guion, Atty. Gen'l of counsel for defendant herein, it is ordered by the Court that the demurrer in this cause be set for trial on Saturday the 17 day of November, 1906, at 11 o'clock A. M., and that Howe, Spencer & Cocke, counsel of record for said compl't be notified thereof.



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*Hearing and Submission of Demurrer.*

Extract from the Minutes.

November Term, 1906.

NEW ORLEANS, *Saturday, November 17, 1906.*

Court met pursuant to adjournment.

Present—Hon. Charles Parlange, District Judge.

No. 55.

TEXAS &amp; PACIFIC RAILWAY CO.

vs.

THE RAILROAD COMMISSION.

This cause came on to be heard upon the demurrer of the Railroad Commission, defendant, and was argued by counsel for the respective parties and submitted—when the Court took time to consider.

*Order Overruling Demurrer.*

Extract from the Minutes.

November Term, 1906.

NEW ORLEANS, *Tuesday, November 27, 1906.*

Court met pursuant to adjournment.

Present—Hon. Charles Parlange, District Judge.

No. 55.

TEXAS &amp; PACIFIC RAILWAY CO.

vs.

RAILROAD COMMISSION.

This cause came on to be heard at a former day upon the demurrer filed by the defendant and after arguments from counsel was admitted and taken under advisement, whereupon and on consideration thereof, it is ordered that the said demurrer be overruled and that defendant be allowed ten days in which to file its answer.

*Order Associating Counsel.*

Extract from the Minutes.

November Term, 1909.

NEW ORLEANS, *Saturday, February 12, 1910.*

Court met pursuant to adjournment.

Present—Hon. Rufus E. Foster, District Judge.

No. 55. (B. R. Div.)

TEXAS &amp; PACIFIC R. R. Co. et als.

vs.

RAILROAD COMMISSION OF LA.

Considering the motion filed this day by Walter Guion, Attorney General of the State of Louisiana, representing defendant in this cause, it is ordered that E. Howard McCaleb, Esq., be associated of record as of counsel to said defendant in this cause.

*Motion and Order as to Record.*

Entered and Filed March 17, 1910.

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

No. 55. B. R. D.

TEXAS &amp; PACIFIC RAILWAY COMPANY et als.

vs.

RAILROAD COMMISSION OF LOUISIANA et als.

On joint motion of Walter Guion, Attorney General of Louisiana, and E. Howard McCaleb, of counsel, representing the defendant, the Railroad Commission of Louisiana, and Walter Guion, Attorney General of Louisiana, and of Howe, Fenner, Spencer & Cocke, solicitors for the Texas & Pacific Railway Company, and  
 8 Alexander & Wilkinson, solicitors for the Kansas City Southern Railway Company, and of Hudson, Potts & Bernstein, solicitors for the St. Louis, Iron Mountain and Southern Railway, complainants, and on suggesting to this Honorable Court that the original record in this cause has been lost or mislaid and cannot be found in the archives of the clerk of this Honorable Court, and on further suggesting that the transcript of appeal, heretofore taken to the granting of the preliminary writ of injunction to the Honorable the Circuit Court of Appeals in printed form, contains all of the pleadings, exhibits and affidavits prior to the filing of the joint and several answers of the Railway Commission of Louisiana and of Walter Guion, Attorney General of Louisiana.

And on further suggesting that the joint and several answers of defendants and the replications thereto have been heretofore filed, but have been lost or mislaid and cannot be found. Accordingly, your movers representing the Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, defendants, present herewith the answers to the original and supplemental bill of complaint, and ask that the same be substituted herein and filed nunc pro tunc as of date of the filing of the answer herein.

And on further suggesting that counsel have agreed that general replications to said answer, on behalf of each of the complainants herein be considered as having been filed nunc pro tunc as of date on which the replications that have been lost or mislaid were filed.

And on further suggesting that movers have agreed that the printed transcript of appeal, a copy of which has been filed in the United States Circuit Court of Appeals, and the answer and replications filed this day nunc pro tunc, shall constitute the record as made up to this date, and that William Grant, Special Master in Chancery, should be directed to take the proofs and report upon this cause to this Honorable Court at the earliest possible despatch.

It is, therefore, ordered by the Court that the printed copy of the transcript of the record in this cause, filed in the United States Circuit Court of Appeals, and the answer of defendants and the general replications filed thereto and agreed upon by counsel, shall constitute the record as made up in this cause in lieu of and instead of the original record that has been lost or mislaid and shall be considered as filed nunc pro tunc, and that William Grant, Esq., the Special Master in Chancery, appointed herein, be directed to proceed

9      to the taking of proofs with all possible despatch and report upon the facts and the law of this case as required by the orders of this Court appointing him Special Master in Chancery.

New Orleans, March 16th, 1910.

(Signed)

RUFUS E. FOSTER, *Judge.*

The foregoing motion and order are agreed to.

(Signed)      WALTER GUION, *Atty. Gen'l.*

*Solicitor for Defendants.*

(Signed)      E. HOWARD McCALB,

*Of Counsel for Defendants.*

(Signed)      HOWE, FENNER, SPENCER & COCKE,

*Solicitors for Tex. & Pac. Ry. Co.*

(Signed)      ALEXANDER & WILKINSON,

*Solicitors for K. C. S. Ry. Co.*

(Signed)      HUDSON, POTTS & BERNSTEIN,

*Attys. for St. L. I. M. & So. Ry.*

*Joint and Several Answers of the Railroad Commission of Louisiana,  
et al., to Original and Supplemental Bills of Complaint.*

Filed March 17, 1910. As of Date December 7, 1906, Nunc  
Pro Tunc.

No. 55, Baton Rouge Division.

United States Circuit Court, Eastern District of Louisiana,  
Fifth Circuit.

In Equity.

TEXAS & PACIFIC RAILWAY COMPANY et als.,  
vs.  
RAILROAD COMMISSION OF LOUISIANA et als.

The joint and several answers of the Railroad Commission of Louisiana and of Walter Guion, Attorney General of Louisiana, to the original and supplemental bills of complaint of The Texas & Pacific Railway Company, The St. Louis, Iron Mountain & Southern Railway Company and the Kansas City Southern Railway Company, plaintiffs.

These defendants, respectively, now and at all times saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bills contained, for answer thereto, or to so much thereof as these defendants are advised it is material and necessary for them to make answer to, severally answering, say:

I.

Defendants admit that the Texas & Pacific Railway Company is a corporation organized and created under the laws of the United States, as specifically set forth in said bill, and has acquired, completed, possessed and operated a line of railway from El Paso, in the State of Texas, to New Orleans, in the State of Louisiana, and has been operating the same upwards of twenty years, last past, under charters, grants, franchises and acquisitions, and the said railway has been operated and used and is now being operated and used as a medium of interstate commerce, but defendants deny that said railway has been or is operated and used as a medium of foreign commerce, whereby freight of various kinds destined for export, including all kinds of logs, lumber and staves, is carried from points in Louisiana and Texas to the port of New Orleans and there exported; but admit said railway is a medium for the transportation of the United States mail and otherwise as an important Federal agency.

## II.

Defendants admit that the St. Louis, Iron Mountain and Southern Railway Company possesses and operates a line of railway extending, in part, from St. Louis, in the State of Missouri, to Texarkana, in the States of Arkansas and Texas, and in part from St. Louis, in the State of Missouri, to Alexandria, in the State of Louisiana, but defendants deny that said railway is an instrument of foreign commerce.

## III.

Defendants admit that the Kansas City Southern Railway Company possesses and operates a line of railway from Kansas City, in the State of Missouri, to Shreveport, in the State of Louisiana, but denies that said railway is used for the carriage of or is an instrument of foreign commerce.

## IV.

11 Defendants severally admit the allegations of the fourth paragraph of said bill of complaint, save as to any conclusions of law therein contained, which are denied.

## V.

Defendants severally admit the fifth and sixth paragraphs of said bill of complaint.

## VI.

Defendants severally admit the averments contained in the seventh paragraph of said bill of complaint, save and except that they do not admit that the logs and staves delivered to plaintiff, the St. Louis, Iron Mountain and Southern Railway Company, and delivered to it for carriage over its own and connecting lines to New Orleans, were at the time of such delivery and at all times thereafter, intended and destined by the shippers and consignees to be exported to foreign countries from the port of New Orleans. But that, on the contrary, defendants have no means of knowing the intention of said shippers and consignees or the destination of said shipments, the said shipments having been carried on a local bill of lading from the said points in Louisiana, to the port of New Orleans. They, accordingly, deny any intention of said shippers and consignees and the destination of said logs and staves beyond the port of New Orleans, and further, that such intention and destination was and is immaterial, and they aver that it frequently occurs that said intention and destination are often changed and diverted by the shippers and consignees upon arrival of such articles in New Orleans.

Defendants further severally admit that the logs and staves described in the seventh paragraph of said bill of complaint were accepted for carriage upon a rate of twelve (12) cents per one hundred pounds, but that said rate was and is in violation of the orders of defendants, the Railroad Commission of Louisiana and the laws of the State of Louisiana.

Defendants further say they have no knowledge and, therefore, deny that said rate of twelve cents per hundred pounds was and is the rate on logs, staves and other lumber destined for exportation or in course of interstate or export shipment prescribed in and obligatory on plaintiffs, The Texas & Pacific Railway Company and St.

12 Louis, Iron Mountain and Southern Railway Company, by the tariffs established, published and filed by said two plaintiffs with the Interstate Commerce Commission.

## VII.

Defendants severally admit that the logs and staves contained in the described cars were transported by the St. Louis, Iron Mountain and Southern Railway over its line to Alexandria, its point of connection with the line of the Texas & Pacific Railway Company, and were there delivered to, and received by, the Texas & Pacific Railway Company and by it transported to the City of New Orleans. They further admit that the arrival of said freight was, as is customary, notified to the said consignee, Charles S. Elms and Hub Durselen, but defendants severally deny that said consignees, in turn, notified the plaintiff, the Texas & Pacific Railway Company, to deliver said logs and staves to certain steamship lines plying between New Orleans and European ports, and they severally deny that the Texas & Pacific Railway Company, plaintiff, did deliver said freight to the steamship lines so designated, and they deny that same was received by said steamship lines and loaded upon their steamships, and thereafter exported from the State of Louisiana, and they severally deny that said consignees and shippers had always known and intended that they should be.

Defendants severally deny that said transportation from points of origin of said freight on the line of plaintiff, the St. Louis, Iron Mountain and Southern Railway Company, to points of destination in Europe was a continuous carriage of said freight, allowing only necessary time for trans-shipment at the port of New Orleans, and they further deny that it was always intended by the shippers and consignees to be such.

Defendants severally admit that the St. Louis, Iron Mountain and Southern Railway Company demanded and collected from the consignees, freight on the said logs and staves at the rate of twelve cents per hundred pounds, but deny that said plaintiff had a right so to do, and deny that the St. Louis, Iron Mountain & Southern Railway Company in demanding and collecting from the consignees freight on said logs and staves at the rate of twelve cents per one hundred pounds, acted in its own interest and behalf, the fact being that said freight charges were collected for account of both said plaintiffs, and they further deny that the Texas & Pacific Railway Company delivered said logs and staves to said steamship lines.

## VIII.

Defendants severally admit and say that it is true, on October 10th, 1905, Charles S. Elms filed with the Railroad Commission of Louisiana a complaint, copy of which is annexed and made part of the bill of complaint, marked Exhibit "C."



They admit that said complainant, Elms, claimed, but deny that he pretended, that the staves and logs transported in the cars, described and numbered as stated in the bill herein filed, were subject to the rate of ten cents per hundred pounds prescribed in the order of said Railroad Commission No. 445, and that the charge of twelve cents per hundred pounds demanded and collected by the St. Louis, Iron Mountain and Southern Railway Company and the Texas & Pacific Railway Company was in violation of said order and illegal, but defendants severally deny that said staves and logs were at all times destined for and constituted subjects of foreign commerce.

### IX.

Defendants severally admit the facts and averments contained in the 10th, 11th and 12th paragraphs of said bill of complaint.

### X.

Defendants severally admit that in the month of March, 1905, Friedlander and Oliven delivered to plaintiff, the Kansas City Southern Railway Company, at Leesville, a station in Louisiana on the line of its said railway, a large number of oak staves and oak headings consigned to George Gerdes at New Orleans, Louisiana; that said staves were loaded into three cars, designated as Texas and Pacific Cars Nos. 7035, 6451 and 7036; that said commodities, so delivered to plaintiff, the Kansas City Southern Railway Company, were delivered to it for carriage over its own and connecting lines to New Orleans, but defendants severally deny that said commodities were at the time of delivery and at all times thereafter, intended and destined by the shippers and consignees to be exported to foreign countries from the port of New Orleans; and they deny that said transportation, from points of origin of said freight, to the point of destination in New Orleans, was a continuous carriage of said freight to Europe, and they deny that the delivery, at New Orleans, allowed only necessary time for the trans-shipment at the port of

14 New Orleans, or that it was intended by said shippers to be such.

They further deny the averment of fact stated in said bill of complaint that said logs and staves were destined for export, or that such fact was well known to the agent of the Kansas City Southern Railway Company at Leesville, or that it was noted and indicated by said agent on the receipts and bills of lading furnished the said shipper; but they admit that a rate of fifteen cents per 100 pounds was stipulated to be paid for said carriage.

Defendants say they are not aware of, and accordingly deny, that said rate of fifteen cents per one hundred pounds was and is the rate on freight of the described character destined for foreign and interstate commerce prescribed in the tariffs established, published and filed by plaintiffs with the Interstate Commerce Commission.

## XI.

Defendants severally admit that said commodities transported by the Kansas City Southern Railway and Texas & Pacific Railway Company, as aforesaid, and transported to New Orleans, were delivered in the month of April, 1905, to said consignees, but defendants deny that the consignees notified plaintiffs to deliver said freight to the Steamship "West Point" at Westwego, and that whilst said freight was delivered by the consignees to the Steamship "West Point" at Westwego, and by said steamship taken out of the State of Louisiana to Hamburg, or some other foreign port, defendants deny that said plaintiffs were concerned therein.

Defendants admit that the Texas & Pacific Railway Company, acting for the Kansas City Southern Railway and in its own interests, demanded and collected from the consignees freight at the rate of fifteen cents per one hundred pounds, but deny that it had a right so to do.

## XII.

Defendants severally admit the facts stated in the 15th paragraph of said bill of complaint, save and except that they deny that George Gerdes pretended that said staves were subject to a rate of ten cents per one hundred pounds, but that, on the contrary, the said Gerdes claimed that said staves were subject to such rate, and he was right in said claim; and with the further exception that defendants  
15 deny that said staves and headings were at all times destined for and were subjects of foreign commerce.

## XIII.

Defendants severally admit the facts stated in the sixteenth paragraph of said bill of complaint.

## XIV.

Defendants severally deny that the said orders of the Railroad Commission, Nos. 445, 419, 410, as construed and applied by said commission in the matter of the shipments mentioned in said bill, constitutes a regulation of commerce with foreign nations or of interstate commerce, and they deny that said orders are in violation of Clause 3, Section 8 of Article 1 of the Constitution of the United States, or of any laws of Congress, and they deny as so construed and applied by the Railroad Commission of Louisiana that said orders are unconstitutional, null and void.

They further deny that the Railroad Commission of Louisiana was without power or jurisdiction to prescribe the rate of freight to be charged in the instances aforesaid or in similar instances, and deny that said logs and staves were at all times, from the inception of their carriage, objects of interstate and foreign commerce, or that defendant, the Railroad Commission of Louisiana, was without power or jurisdiction to impose the said penalties or that orders Nos. 476 and 477, imposing said fines, are null and void, but that, on the

contrary, all of the acts and doings of defendants were legal, and in no manner interfered with interstate or foreign commerce.

### XV.

That, true it is, these defendants will attempt to enforce and claim the right and duty of enforcing said Orders Nos. 410, 419, 445, 476 and 477 as the said Railroad Commission of Louisiana have a right to do, and no injunction should issue herein to prevent the exercise of said right conferred by the Constitution of Louisiana of 1898. That none of said orders are violative of the constitution and laws of the United States or of the State of Louisiana but are recognized as valid.

Defendants deny that the enforcement of said orders will diminish the revenues of plaintiffs in any sum whatever, or in the  
16 sum exceeding five thousand dollars, and they deny that this cause is of a civil nature and arise under the constitution and laws of the United States, and deny that the amount in controversy herein, as to and in respect to each one of plaintiffs, exceeds the sum of five thousand dollars, exclusive of interest and costs.

Wherefore, these defendants having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered according to their best knowledge and belief, humbly pray this Honorable Court to enter its decree that these defendants, respectively, be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained, and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

(Signed)

E. HOWARD McCaleb,

*Of Counsel,*

(Signed)

WALTER GUION,

*Attorney General of Louisiana,*

*Solicitor for Defendant.*

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*Master's Report.*

Filed August 12th, 1910.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 55.

TEXAS & PACIFIC RAILWAY COMPANY et al.,

vs.

RAILROAD COMMISSION OF LOUISIANA.

To the Honorable the Judges of the United States Circuit Court for the Eastern District of Louisiana:

This cause came on to be heard before me at my office in the City of New Orleans on the first day of April, 1910, under the order of reference dated January 25th, 1906,

Present:

Howe, Fenner, Spencer & Cocke, Solicitors for Texas & Pacific Railway Company.

F. G. Hudson, Solicitor for St. Louis, Iron Mountain & Southern Railway Company.

Alexander & Wilkinson, Solicitors for Kansas City Southern Railway Company.

Hon. Walter Guion, Attorney General of Louisiana, with whom was associated E. H. McCaleb, as solicitor for defendants.

After taking evidence in behalf of the Texas & Pacific Railway Company, the further hearing was postponed, for the convenience of the parties, to April 21st, 1910, at which time the hearing of the evidence was concluded and the reference was closed.

And now, having heard the parties upon the issues involved in the reference, I respectfully submit my findings of fact and conclusions of law thereon, as follows:

1. I find that the complainant, the Texas & Pacific Railway Company, is a railway corporation created under the laws of the United States, and has been in existence and operation between El Paso, Texas, and New Orleans, Louisiana, as a common carrier of freight and passengers, under its charter, continuously since 1884-5, to the present time.

18      2. I find that the complainant, the St. Louis, Iron Mountain & Southern Railway Company, is a consolidated railway corporation created under the laws of the States of Arkansas and Missouri, with its legal domicile in the City of St. Louis, State of Missouri, and has owned and operated, since 1892, a line of standard gauge steam railroads, as a common carrier of freight and passengers, from points in said state to Alexandria, in the State of Louisiana.

3. I find that the Kansas City Southern Railway Company owns and, since 1904, has operated a line of standard gauge steam railroads from the City of Kansas City, in the State of Missouri, through the State of Louisiana, as a common carrier of freight and passengers, with its legal domicile in the said City of Kansas City, State of Missouri.

4. I find that all of said railroad companies, in the years 1904 and 1905, were engaged in interstate and intrastate commerce, transporting freight from points within and without the State of Louisiana, to the City of New Orleans, which are subsequently loaded on board of ships and transported to foreign parts and countries.

5. I find that the defendant, the Railroad Commission of Louisiana, was created by Articles 283 to 289, inclusive, of the Constitution of Louisiana, adopted in the year 1898, and the amendments thereto.

6. I find that the lines of railroad of the Texas & Pacific Railway Company and of the Kansas City Southern Railway Company connect at Shreveport, Louisiana; and that those of the Texas & Pacific Railway Company and of the St. Louis, Iron Mountain & Southern Railway Company connect at Alexandria, Louisiana.

7. I find that the Railroad Commission of Louisiana, on May 25th, 1905, promulgated and put in effect its Order No. 445, a copy of

which is annexed to complainant's bill, marked Exhibit "A," which fixed the freight rates that said railroads were entitled to charge on all intra-state traffic, and that said rates were effective and in force at the date of the shipments in controversy in this cause.

8. I find that in the months of July, August, September and October, 1905, the Urania Lumber Company, L. M. Jones, 19 Bradford Bros., J. T. Adams and H. T. Bradford, delivered to the said St. Louis, Iron Mountain & Southern Railway Company, at Olla, Georgetown and Kelly Stations, on its line of railroad within the State of Louisiana, eighteen (18) carloads of staves and poplar logs, consigned to Charles S. Elms and Hub Durselen, at New Orleans (see Exhibit "B" annexed to complainant's bill); that said eighteen carloads of logs and staves were transported by said receiving carrier from said initial stations on its line to Alexandria, and there delivered to its connecting carrier, the Texas & Pacific Railway Company, which transported the same to the City of New Orleans, where the logs and staves were unloaded from the cars on board ship and exported to foreign countries.

9. I find that when said shipments were made, the legal tariff filed with and approved by the Railroad Commission of Louisiana on intrastate shipments of lumber, logs and staves from points on the St. Louis, Iron Mountain & Southern Railway in Louisiana to the City of New Orleans, was ten cents per hundred pounds; and that the legal tariff filed with and approved by the Interstate Commerce Commission on such shipments at that time was twelve cents per hundred pounds.

10. I find that upon the arrival of said eighteen (18) cars at New Orleans, the Texas & Pacific Railway Company notified the consignees, Charles S. Elms and Hub Durselen, in the usual and customary manner, and that said consignees ordered the Texas & Pacific Railway Company to deliver the freight to certain steamships plying between New Orleans and European ports; and I find that said freights were so delivered as ordered and were received on board said steamships, and exported from the State of Louisiana, and that a freight rate of 12 cents per hundred pounds was charged on said shipments and collected by the Texas & Pacific Railway Company.

11. I further find that in March, 1905, Friedlander & Oliver delivered to the complainant, Kansas City Southern Railway Company, at Leesville, Louisiana, on its line of railroad, three carloads of tank staves, which had been loaded into Cars Nos. 7035, 7036 and 6451 of the Texas & Pacific Railway Company to be transported to George Gerdes, consignee, at New Orleans.

The rate on these staves from the initial point of New Orleans, as established by the Railroad Commission of Louisiana, was at the time ten cents per hundred pounds; and the interstate rate fixed by the tariff sheet filed with and approved by the Interstate Commerce Commission, for such shipments, was fifteen cents per hundred pounds.

12. I find that said three carloads of staves were transported by the Kansas City Southern Railway Company from Leesville to Shreveport, Louisiana, and there delivered to its connecting carrier, the Texas & Pacific Railway Company, which hauled the same to the City of New Orleans.

That on arrival of the cars the customary notice was given to consignee, and, thereupon, the consignee in the month of April, 1905, directed said railroad to deliver the freight to Steamship "West Point," at its Westwego Terminal wharf, but the steamship having removed to the city front, the cars were delivered to the Illinois Central Railroad Company, which, in turn, switched them to the Southern Pacific Railroad which road switched them to the wharf, where the staves were at last loaded on said steamship and transported to Hamburg, Germany. The Texas & Pacific Railway Company collected freight charges thereon from the consignee, at the rate of fifteen cents per hundred pounds.

13. I find that the said George Gerdes, at the date of the shipment of said three carloads of staves, resided in the City of New Orleans, where he was engaged as a ship broker in negotiating for cargo space, rates and attending to shipments for consignors in the United States; and that the said Charles S. Elms and Hub Durselen, consignees of said 18 carloads, were engaged at New Orleans in the business of exporting staves to foreign countries, and that the staves which they dealt in, are not treated, manufactured or changed from the original shape in which they are received at New Orleans for export, and that 98 per cent. of the shipments by them at New Orleans are exported to foreign countries.

14. I find that the 18 cars referred to in Exhibit "B" attached to complainant's bill, and the three carloads consigned to George Gerdes, arrived in New Orleans and were delivered aboard ship for export on the dates following:

Car 11,575 M. P., arrived July 25, 1905, and delivered to ship, July 27, 1905.

Car 2029 I. M., arrived August 1, 1905, and delivered to ship, August 14, 1905.

21 Car 23, 167 M. P., arrived August 1, 1905, and delivered to ship, August 14, 1905.

Car 23,081 M. P., arrived August 1, 1905, and transferred to New Orleans for belting for delivery to ship, August 7, 1905.

Car 526, M. P., arrived August 9, 1905, delivered to Steamship Colonian, August 25, 1905.

Car 26,721 M. P., arrived October 7, 1905, delivered to Ship Asian, October 18, 1905.

Car 937, M. P., arrived October 7, 1905, and delivered to Ship Asian, October 18, 1905.

Car 2580 M. P., arrived October 7, 1905, and delivered to Ship Louisianian, November 2, 1905.

Car 33,479 M. P., arrived October 7, 1905, and delivered to Ship Asian, October 18, 1905.

Car 66,068 S. P., arrived October 8, 1905, and delivered to Ship Asian, October 18, 1905.

Car 5560 T. P., arrived October 8, 1905, and delivered to Steamship Belgian, October 30, 1905.

Car 84,852 C. P., arrived October 8, 1905, and delivered to Ship Asian, October 18, 1905.

Car 6966 T. P., arrived October 8, 1905, and delivered to Ship Belgian, October 30, 1905.



Car I. M., arrived October 10, 1905, and delivered to Ship Louisiana, November 2, 1905.

Car 14,024, I. M. and

Car 12,070, I. M. and

Car 38,325, S. P., arrived here August 1, 1905, ordered to ship's side and unloaded August 7, 1905.

Car 10,749 I. M., arrived here August 9, 1905, and delivered to ship on October 25, 1905.

Car 7,036 T. P., arrived March 30, 1905, ordered transferred to city front and delivered to Steamship West Point, April 4th, 1905.

Car 6,450, T. P., same dates.

Car 7,036, T. P., same dates.

I find in this connection that at the time these shipments were made in 1905, the rules of the Railroad Commission of Louisiana allowed four days free time for unloading cars after arrival at New Orleans and notification to the consignee, except where the consignments were for export, in which case twenty days were allowed. That no demurrage was tendered by the shipper or consignee or received by the carrier on account of the delays in unloading beyond the four days allowed by said rules. And I find that every one

22 of said shipments paid to the carrier  $\frac{3}{4}$  of a cent per 100 pounds for unloading charges, this being the same amount charged on all export shipments. I further find that from the time the shipments herein involved moved from the initial points in Louisiana, under the bills of lading they were in the physical custody of the railroad company until arrival at New Orleans, and that, thereafter, they were in the physical custody of the steamships which issued export bills of lading therefor to the shippers of the cargo.

15. I find from the admission of fact made by the parties herewith returned into Court that the bill of lading marked T. & P. 5560 and the bill marked I. M. 12070 annexed hereto, are samples of the bills of lading on all the shipments made by the St. Louis, Iron Mountain & Southern Railway Company, involved in this case; and I find from the evidence that the bills of lading issued at Leesville by the Kansas City Southern Railway Company for the three carloads of staves consigned to George Gerdes, were substantially in the same form, but that each was endorsed on the back by the station agent with the words, "For Export" and were accepted in that form by the shipper.

I further find that said bills of lading in each instance provided for the delivery of the freight from the initial points of shipment to the City of New Orleans, there to be delivered to shipper or consignee's order.

16. I further find that although the bills of lading issued for all of said cars required the carrier to deliver the freight from the initial points of shipments to the City of New Orleans within the limits of the State of Louisiana, the staves and logs were intended by the shippers to be exported to foreign countries, and were treated by both the shippers and the carrier accordingly, the shippers always holding the cars on the railroad track until they could accumulate cargo to fill their export contracts, and arrange for transportation,

and the railroad company allowing the shippers the usual two days' time for delivery, as in case of export shipments, without charging demurrage, which the carrier would have had a right to collect after the expiration of four days, if the shipments had been considered and treated as purely intrastate.

### *Conclusions of Law.*

23 It appears from the undisputed evidence and the admissions of the parties in the case that shipments of certain carload staves and poplar logs were made by several persons and firms at Olla, Georgetown, Kelly and Leesville in the State of Louisiana, to be transported over the complainant's lines and delivered to the consignees at New Orleans, the haul being entirely within the limits of the state. Through local bills of lading were issued for each shipment by the initial carrier, in the usual form. On the bills, however, of the bills covering three of the cars were stamped in stencil the words "For Export," but there was nothing written on the bills covering the other eighteen cars indicating that the freight was intended for export. The evidence, however, shows to my satisfaction that all the shipments were made with the intention by the shipper to export the same. And it is conceded that the staves and logs were in fact unloaded directly from the cars, some after arrival in New Orleans, into certain steamships and exported to a foreign country.

Whether the shipments under this state of facts constituted interstate traffic or came within the federal statute regulating interstate foreign commerce, is the sole question involved in this case. It is conceded, as I understand it is, that if they are to be considered intrastate shipments, they come within the jurisdiction and regulations of the Railroad Commission of Louisiana, and that the rates assessed against the roads were otherwise valid.

It may be true, as contended by complainants, that prior to the decision of the Supreme Court in the case of *Gulf Colorado and Santa Fe Railway Company vs. Texas*, 204 U. S. 403, it was generally understood that when a shipment has once started on its journey to its ultimate destination and not the nature of the contract of carriage with the initial carrier, determine its character, and quite a number of decisions are cited in support of that proposition, including the cases of *Cutting vs. Florida R. & N. Company*, 46 F. 641, decided by Judge Pardee, on Circuit, and *Swift & Co. vs. United States*, 196 F. 375, in which Justice Holmes wrote the opinion of the Court. But, so far, however, as the decisions bear upon the question here involved, they must be considered as overruled or modified by the opinion of the Court in the Texas case, if inconsistent therewith, as I think they are.

The facts in the Texas case, stated briefly, were as follows: The Samuel Hardin Grain Co. of Kansas City, sold two car loads of corn to Saylor & Burnett of Goldthwaite, Texas, to be delivered at the railroad track at that place. To fill this contract they

24 chased two carloads of corn then in transit under through bills of lading from Hudson, South Dakota, to Texarkana, T

with the privilege of stopping the cars at Kansas City for inspection and transfer. At that place the corn was unloaded, sacked, reloaded and forwarded to Texarkana, their original destination. Here one of the cars was re-shipped for account of the Grain Co., to Saylor & Burnett at Goldthwaite, over the lines of the Texas & Pacific Railway and its connecting carrier, the Gulf Colorado & Santa Fe Co. It appears that the manager of the Grain Company intended, at the time of purchase, that the corn should go to Saylor & Burnett at Goldthwaite, to fill the contract of sale made with them.

When the corn arrived at Goldthwaite, Saylor & Burnette acting as agents of the Grain Company, tendered the charges prescribed by the State Railroad Commission of Texas for local or intrastate traffic, but the local railroad agent refused to accept the tender and demanded and collected the higher rate allowed by the Interstate Commerce Commission on interstate shipments.

The contention on the part of the railroad was that the haul from Texarkana to Goldthwaite was a continuation of the original shipment from Hudson, South Dakota, and was subject to the regulations of the Interstate Commerce Commission as to rates and all other matters. But the Supreme Court held that on reaching Texarkana, Texas, the point specified in the through bill of lading, the original contract of transportation terminated and that the further transportation of the cars to another point in the same state, on the order of the consignee, upon a new bill of lading, was controlled by the state law and not by the Interstate Commerce Act, affirming the decision of the case in 97 Texas, 274.

By this decision the Supreme Court has laid down the rule that a contract of transportation is fully executed when the freight has been carried from the initial point of shipment and delivered at the place of destination specified in the bill of lading, and that whatever obligation may rest upon the carrier at the terminus of its transportation, to deliver to some other carrier, in obedience to the instructions of the owner, it is that of a forwarder, and not of a carrier. The Court further held that whatever may be the thought or purpose of the owner of the freight in respect to its further disposition is immaterial, so far as the completed transportation is concerned. The Court said,

25 in effect, that the character of a contract for transportation is to be determined by the stipulations of the bill of lading when the contract is entered into, and not by the intent of the shipper as to the subsequent disposition of the freight. What effect such intention or understanding might have in an action between the parties to enforce the contract, was not discussed nor considered by the Court, as it was not an issue in the case.

It is claimed on behalf of the Kansas City Southern Railway Company that a different rule should be applied to the shipment of the three carloads of staves at Leesville for which bill of lading were issued and accepted, stamped "For Export," on the ground that these words became embodied in the contract, bringing the transaction within the jurisdiction of the Interstate Commerce Law. But it is clear to my mind that when a shipment is in fact made from one

point to another in the same state, and it is so stated in the bill of lading, the transportation is, in law, intrastate, and cannot become interstate by any intention of either the shipper or the carrier, or by any contract between them, so as to withdraw the transaction from the jurisdiction of the valid laws and regulations of the state on the subject. It would, it seems to me, be impossible to carry into effect either the federal or state laws regulating railroad traffic, if the shipper and the carrier should be conceded the right to convert what in fact is interstate transportation into intrastate transportation, or vice versa, either by intent or express agreement. In this view of the case it ought to be assumed that the words stamped on these bills of lading were intended, not to change the terms of the contract, but to serve as a memorandum to guide the carrier in making the proper disposition of the cars at the terminal point after the transportation was completed in the performance of some duty or obligation towards the shipper as a forwarded [forward-] under the state regulations, one of those obligations being to give the shipper twenty (20) days' free time to receive freight intended for export.

My conclusion, upon consideration of all the facts established before me by the evidence, is that the decision of the Court in the Texas case, 204 U. S., 403, must be held decisive of the issues here involved, which are substantially the same as in the Texas case. It follows, that the complainant's bill must be dismissed, and I so recommend.

Respectfully submitted,

(Signed)

WM. GRANT,

*Special Master.*

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*Note.*

The following is a list of the evidence introduced before me by the respective parties, upon which my findings of facts are based.

1. The mutual admissions of the parties, numbered from 1 to 18, inclusive, marked A-4.

2. The deposition of George H. Schweitzer.

3. The affidavits of George Simpson, William F. Braggins, John Wilkerson, William J. Dardis, Joseph Dardis, Charles S. Elms, Walter Guion, C. L. de Fuentes, W. M. Barrow, James L. Roache filed in the cause.

4. Exhibits "A," "B," "C," "D," "E," "F" and "H" annexed to complainant's bill.

5. Exhibits "A" and "B" being forms of bills of lading filed by defendants.

6. Bills of lading marked A-1 and A-2 filed at hearing.

7. Copy of order fixing rates, marked A-3.

All of which evidence is transmitted to the Court with this report.

27

*Testimony of George H. Schweitzer.*

Filed as of Date August 12, 1910, Nunc pro Tunc.

Filed April 21, 1910.  
(Signed)WM. GRANT,  
*Spl. Master.*United States Circuit Court, Eastern District of Louisiana, Baton  
Rouge Division.

No. 55.

TEXAS &amp; PACIFIC RAILROAD

vs.

RAILROAD COMMISSIONER [COMMISSION] OF LOUISIANA.

*Testimony Taken in the Above Numbered and Entitled Cause on  
Behalf of Complainant, on the 1st Day and 21st Day of April,  
1910, Before William Grant, Esq., Special Master Herein, at His  
Office, Hennen Bldg., New Orleans, La.*

## Appearances:

Howe, Fenner, Spencer & Cocke, for Complainant.  
Judge Walter Guion, Attorney General of Louisiana, and  
E. H. McCaleb, Esq., for Defendant.  
F. G. Hudson, for Iron Mountain & Southern Railway Co.  
Alexander & Wilkinson, for Kansas City Southern Ry. Co.GEORGE H. SCHWEITZER, witness sworn and examined on behalf  
of complainant, testified as follows:

Direct examination.

By Mr. SPENCER:

Q. What is your name?

A. George H. Schweitzer.

Q. Where do you live now?

A. I live at Fullerton, Louisiana.

Q. In whose employ are you at present?

A. In the employ of the Gulf and Sabine River Railroad.

Q. Have you any connection with the Kansas City Southern Rail-  
road or the Texas and Pacific Railroad or the Iron Mountain Rail-  
road, at present?

A. No, sir.

28 Q. Did you ever have any connection with the Kansas City  
Southern Railroad?

A. Yes, sir.

Q. In what capacity?

A. As station agent at Leesville, Louisiana.

Q. Were you station agent for the Kansas City Southern Railroad  
during the year 1905, at Leesville, Louisiana?

A. I was.

Q. And particularly during the month of March, 1905?

A. Yes, sir.

Q. Do you remember certain shipments of oak tank staves and oak headings made by Friedlander & Oliven?

A. Yes, sir.

Q. Made to George Gerdes in New Orleans?

A. There were several shipments of staves along about that time made by Friedlander and Oliven to George Gerdes, New Orleans, but I can't say as to the exact date.

Q. Could you, if you had the bills of lading, identify those shipments?

A. Yes, sir.

Q. Were the bills of lading signed by you?

A. They were.

Q. Were the bills of lading for all the staves shipped by Friedlander & Oliven, signed by you?

A. I think in each case they were signed by me, personally.

Q. I want to ask you to state whether or not at the time these staves were tendered to you for shipment you made any inquiry as to whether or not they were intended for export or domestic use?

Mr. McCaleb: We object to any and all evidence going to show intention of the shippers or to any statements made by the shippers as to their intention, whether the staves were intended for local or export use. That the bill of lading is the best evidence and further because the contract of shipment for local transportation does not become interstate or foreign in its character from the fact that the shipper intends, after such local contract of shipment has been completed, to forward the goods to some place outside of the state or to some foreign country. We object to the testimony as being incompetent and immaterial. And it is understood that this objection shall apply to all testimony given by any witness on these lines.

A. I did.

29 Q. What reply did you receive from the party making the shipment?

A. The reply from the man that was loading out—had charge of the checking up and loading the staves at that time was that they were going to the old country.

Q. By that you understood exported out of the United States?

A. Yes, sir.

Q. What did you do then, when you prepared the bills of lading covering these shipments?

A. I marked across the face of the bill of lading and duplicate, "For Export."

Q. And were the bills of lading so marked, delivered to the shippers?

A. They were.

Q. Subsequently, did you have any conference or conversation with the shipper about having so marked said bills of lading?

A. I did.

Q. What was said and done?



A. There was another man that took charge of this loading and checking of the staves and when he brought in the bill of lading for signature he told me that he did not want the words "For Export" placed upon the bill of lading, that his refused [refusal] to accept the bill of lading with that notation on it. I asked him if the staves were intended for domestic use, or were they intended for export. He declined to answer. I then told him if he would get an affidavit from his firm that these staves were intended for domestic use I would leave off the words "For Export," and bill them at the rate published for domestic staves to New Orleans, otherwise I would continue to insert the words "For Export."

Q. Did he ever produce any such affidavit or renew his request?

A. He renewed his request the next time he presented a bill of lading, but did not furnish the affidavit requested by me.

Q. And acting on the information that you had previously received, and in view of his refusal thereafter to answer, you marked them "For Export."

A. I did.

Q. Were these two men you have spoken of, were they in charge of the shipment of these staves in behalf of Friedlander and Oliven?

A. I suppose they were, as they brought in bills of lading  
30 to be signed, brought in the information from which I made up the bills of lading, and the ones that were signed were delivered to them.

Cross-examination.

By Mr. M'CALEB:

Q. I show you on page 37 of the printed record a blank form of a bill of lading and ask you if that form of bill of lading was the one signed by you or was similar to the one signed by you?

A. Well, I cannot say now, because I do not remember just what that form was.

Q. Was it the form of bill of lading prescribed by the Louisiana Railroad Commission?

A. I do not believe at that time that the Railroad Commission had any prescribed form of bill of lading.

Q. Are you sure of that?

A. I say I don't think. It was the regular form of bill of lading used by the Kansas City Southern Railroad.

Q. Don't you know that was the form prescribed by the Louisiana Railroad Commission?

A. My previous answer covers that.

Q. You have not got the bill of lading here at all?

A. I have not.

Q. Did the bills of lading have the Louisiana uniform bill of lading printed on it?

A. I do not think the uniform bill of lading was out at that time, in fact, I am almost certain of that fact.

Q. And you are sure—you positively swear there was no uniform bill of lading prescribed by the Railroad Commission at that time?

A. I don't swear anything of the kind.

By Judge GUION:

Q. Please state what you swear in regard to that?

A. All I say is, that the bill of lading signed by me or bills of lading signed by me, at that time, were the regular forms used by the Kansas City Southern Railroad at that time.

By Mr. M'CALEB:

Q. You cannot identify this form which I have shown you, printed on pages 37, 38, 39 and 40 of the printed record?

31 A. No, sir; unless I had one of the original bills of lading or a copy of same that was signed at that time.

Q. These statements that were made to you relative to the intention of the shippers, were they made by Friedlander and Oliven, the shippers?

A. No, sir; I never so stated.

Q. By whom were they made?

A. By their representatives.

Q. What are their names?

A. I am unable to say at present, I do not know.

Q. How did you know they were their agents?

A. Because they presented the memorandum from which the bills of lading were made, and received the bills of lading after they were signed.

Q. Did these parties tell you they represented Friedlander and Oliven?

A. They did.

Q. They told you so?

A. They did.

Q. That is the way you knew it?

A. Yes, sir.

Q. Do you know how many cars of staves heading were shipped on that day, March 11, 1905?

A. I do not.

Q. How many bills of lading were issued?

A. If I knew I would know how many cars were shipped, I can't say, I can't recollect.

Q. Did you mark the words "For Export" on all the bills of lading?

A. I am pretty positive that I did.

Q. Are you sure?

A. No, sir; I would not swear to it at this day, five years later. It was my intention to do so.

Q. Did you mark these words "For Export" on all the bills of lading of shipments of staves and headings in every case while you were station agent of the Kansas City Southern?

A. Well, I would like to know what is meant by that question. Do you mean in each case of a car of staves billed out by Friedlander & Oliven and everybody else?

Q. And everybody else to New Orleans, to consignees in New Orleans?

A. I did not.

Q. You did not mark them on every bill of lading?

A. No, sir.

32 Q. How did you discriminate between the shipments made by Friedlander and Oliven and other shippers, as to whether they were shipments for export or local consumption?

A. By questioning the shipper.

Q. And if the shipper told you it was the intention of the consignee, or it was their intention that the staves were to go out of the country or to some foreign port, then you would mark on the bills of lading "For Export?"

A. Yes, sir.

Q. And charge the export rate, 15 cents?

A. Yes, sir.

Q. You testified that you asked Friedlander & Oliven to furnish an affidavit and they refused?

A. My testimony says, I think, I asked their representatives there to ask the firm to furnish me that affidavit or statement, not themselves but their representatives.

Q. And they refused?

A. They did not refuse. They simply paid no attention to it.

Q. Did you ask for that affidavit from all other shippers?

A. I don't know that I did.

Q. Why not?

A. Because the other shippers were shipping an entirely different class of staves.

Q. To whom did they ship?

A. Well, at present I could not say to whom they did ship.

Q. Did they ship to exporters?

A. I don't know that any one—that there is any one shipment made to New Orleans outside of the one of Friedlander & Oliven.

Q. Who was the consignee under these bills of ladings?

A. The outsiders.

Q. The consignees of these stave shipments?

A. Domestic staves.

Q. No. I say what was the name of the consignee of the Friedlander and Oliven shipments?

A. To the best of my recollection it was George Gerdes, New Orleans.

Q. Did you know whether George Gerdes, New Orleans, exported these staves?

A. I did not.

Q. Did you know whether he intended to export these staves?

A. I did not.

33 Q. Therefore, on the mere expression of intention on the part of the representatives of Friedlander and Oliven, you marked on these bills of lading "For Export" and charged the export rate. Is that correct?

A. On the statement or strength of the statement rather of the representative of Friedlander & Oliven that these staves were intended for export and the character of the staves I marked on the bill of lading for export.

Q. Did your line or the Kansas City Southern, at that time or while you were in its employ, issue any through bills of lading to foreign points?

A. I cannot say whether they did or not. At a little station such as I had at that time we did not, that I know of.

Q. These bills of lading that you signed were not through bills of lading?

A. What do you mean by through bills of lading?

Q. Well, to a foreign country?

A. They were not.

Q. They were to New Orleans, were they not?

A. They were consigned to New Orleans.

By Judge GUION:

Q. From Leesville?

A. From Leesville.

Q. Both points in Louisiana?

A. I believe they are.

By Mr. M'CALEB:

Q. As station agent, Mr. Witness, did you issue tickets for passengers going from Leesville to other points in Louisiana?

A. I did.

Q. Did you issue tickets from Leesville to New Orleans?

A. I did.

Q. When these passengers applied to you for tickets, say from Leesville to New Orleans, did you ask them if it was their intention or either of them, if it was their intention to go from New Orleans to some foreign country outside of the state?

Mr. SPENCER: I object to the question, on the ground that the testimony sought to be elicited is utterly irrelevant, immaterial and incompetent, and neither proves nor tends to prove any issue in this case.

34 The MASTER: I do not think it is admissible.

Q. Do you know what became of these shipments after they reached New Orleans?

A. I do not.

Q. Do you know whether or not these shipments were trans-shipped to foreign countries?

A. The answer to the previous question covers that.

Judge GUION: I would suggest that the witness should answer the question.

The MASTER: Go on and answer.

A. I answer no.

Q. Do you know whether these shipments you billed out under local rate were exported?

A. I do not.

Q. Did you make any attempt to find out?

A. I did not.

By Judge GUYON:

Q. Then I understand, Mr. Schweitzer, that these shipments of staves and headings from Leesville were all made to the City of New Orleans, and that the bill of lading was made out from Leesville to New Orleans, originally, was it not?

A. Yes, sir.

Q. And that you added on the bill of lading the words "For Export," because some representative of the shipper informed you they were intended for export. Is that correct?

A. That and the character of the staves the two together caused me to put on those words.

Q. The bills of lading were none of them from Leesville to any point beyond New Orleans, were they?

A. The Friedlander & Oliven staves?

Q. Yes.

A. They were not.

Redirect examination.

By Mr. SPENCER:

Q. Did you know that Friedlander & Oliven were exporters of staves at that time?

35 A. I understood they were.

Q. From whom did you get that information?

A. I think from their representatives.

Q. Were these representatives of theirs, foreigners?

A. They were.

Q. Do you know where Friedlander & Oliven have their principal office or place of business?

A. I think at that time it was Memphis, Tenn.

Q. Had you know- Mr. George Gerdes before that?

A. I had not.

Q. You did not know in what business he was in?

A. I did not.

Q. You say that you could judge from the character of staves that they were probably for export. On what do you base that statement?

A. On the fact that they were a peculiar kind of a stave. They were made from the best quality of oak trees hewn out by hand and of a character and kind formerly shipped by different parties in Missouri who also stated that they were to be used in foreign countries.

Q. In other words, from your experience in the handling of staves, you learned that staves of that character were intended for foreign shipment?

A. I did.

Q. Do they differ in any respect from staves which are used in domestic commerce?

A. They differ in the general run of the staves.

Q. You mean in the appearance and method of manufacture?

A. Yes.

Q. Am I correct in my understanding that at the station at Leesville you only had one kind of bill of lading?

A. That is it; yes, sir.

Q. You used that bill of lading for shipments wherever made?

A. I did.

Q. Or of whatever character?

A. I used it for all shipments.

Q. Leesville was a very small station, was it not?

A. It was.

By Judge GUION:

Q. Do you mean that you had never, at any time, made through shipments from Leesville to any foreign port?

A. I do.

36 Q. So that all of your shipments from Leesville were to New Orleans where you thought the shipment was to go beyond New Orleans for export. Is that correct?

A. I think so.

By Mr. SPENCER:

Q. How long ago did you resign your position in the Kansas City Southern?

A. Two years ago last December.

Q. Have you had access to the records of the company in Leesville since that time?

A. I was at Leesville at one time since then looking over some old records in reference to another claim.

Q. I mean you have not had access to their records recently?

A. I have not.

Mr. SPENCER: Counsel for plaintiff states that the original bills of lading covering the shipments the witness has been testifying to, were filed with the Railroad Commission of Louisiana at the time of the hearing on the order complained against in this suit, and have not been in the possession of the plaintiff since.

Judge GUION: And counsel for the defendant states that the bills of lading, or at least one of them, of which counsel has positive recollection was sent to him by the secretary of the Railroad Commission, but has been lost or mislaid.

Mutual Admissions of the Parties, Numbered from 1 to 18, Inclusive, Marked A-4. Referred to in the Report of the Special Master and Filed December 30, 1910, Nunc Pro Tunc, as of Date August 12, 1910.

APRIL 21, 1910.

Mr. HUDSON: The following admissions are made by counsel for complainants and defendants.

No. 1. That the Texas and Pacific Railway Company as a railway corporation created and under the laws of the United States, was in operation from El Paso, Texas, to New Orleans, Louisiana, as  
37 a common carrier of passengers and freights in 1884 and 1885, and has been so continually existing and operating ever since.

No. 2. That the St. Louis, Iron Mountain and Southern Railway Company is a consolidated railway corporation organized under and created by the laws of the States of Arkansas and Missouri with its legal domicile in the City of St. Louis, State of Missouri, and since 1892 has owned and operated a line of standard steam gauge railroads as a common carrier of passengers and freights from points in the States of Arkansas and Missouri to Alexandria in the State of Louisiana.

No. 3. That the Kansas City Southern Railway Company owns and since 1904 has operated a line of standard gauge steam railroad from the City of Kansas City in the State of Missouri, through the State of Louisiana, as a common carrier of passengers and freights with its domicile in the City of Kansas City, State of Missouri.

No. 4. That all of said railroad companies in 1904 and 1905 were engaged in the transportation of intrastate and interstate commerce and in bringing freights from points within and without the State of Louisiana to New Orleans which are subsequently loaded on board ships and transported to foreign ports.

No. 5. That the Railroad Commission of Louisiana was created by Articles 283 to 289, inclusive, of the Constitution of Louisiana, adopted in 1898 and amendments thereto.

No. 6. That the lines of railroad of the Texas & Pacific Railway Company and the Kansas City Southern Railroad Company connected at Shreveport, Louisiana; and those of the Texas and Pacific Railway Company and the St. Louis, Iron Mountain and Southern Railway Company connected at Alexandria, Louisiana.

No. 7. That the Railroad Commission of Louisiana, on May 25, 1905, adopted, promulgated and put in effect Order No. 445, copy of which is annexed to and made a part of plaintiff's bill of complaint and marked Exhibit A, and that said copy as printed in the transcript of the record on appeal of this cause to the Honorable Circuit Court of Appeals of the United States is a true copy of said order.

38 No. 8. That in the months of July, August, September and October, 1905, the Urania Lumber Company, L. M. Jones, Bradford Bros., J. T. Adams and H. T. Bradford, delivered to the St. Louis, Iron Mountain and Southern Railway Company at Olla, Georgetown and Kelly stations, on its line of railroad in Louisiana, the said stations of Olla, Georgetown and Kelly being stations on said railroad within the State of Louisiana, a number of carloads of oak staves and poplar logs, consigned to Charles S. and Hub Durselene at New Orleans, Louisiana; said staves and logs were loaded in 18 cars whose numbers and descriptions will appear in document marked Exhibit B, attached to plaintiff's bill of complaint; that said cars of logs and staves were transported by the St. Louis, Iron Mountain and Southern Railway Company from said initial stations on its line to Alexandria, Louisiana, and delivered to its connecting carrier the Texas and Pacific Railway Co., which transported them to New Orleans where they were unloaded from cars aboard ship and exported to foreign countries.

No. 9. That when said shipments were made the legal tariff filed with and approved by the Railroad Commission of Louisiana on intrastate shipments of lumber, logs and staves from points on the St. Louis, Iron Mountain and Southern Railway in Louisiana to New Orleans, was ten cents per 100 pounds, and that legal tariffs filed with and approved by the Interstate Commerce Commission of such shipments at that time for interstate movement was 12 cents per 100 pounds.

No. 10. That on arrival of said freights at New Orleans, the Texas & Pacific Railroad notified the consignees, Charles S. Elms and Hub Durselene, thereof, in the usual and customary way, and in turn said consignees ordered the T. & P. Ry. Co. to deliver same to certain steamships plying between New Orleans and European ports, and said T. & P. Ry. Co. did deliver said freights to said steamship lines so designated and the same were received by said steamships on board of said steamships and exported from the State of Louisiana.

No. 11. Plaintiff offers Railroad Commission Order 477, dated Nov. 10, 1905, being order imposing the fines contested in this case on plaintiff. This order is annexed to and made part of the plaintiff's bill as Exhibit D. And it is admitted that the same is a true copy of the original Order 477. It is further admitted copies  
39 of Orders 445, 419, 410, 476 and 477 which are annexed to and made part of the bill of complaint are true and correct copies of said orders, and are offered in evidence in this case as printed in the printed record filed in this case, and that copy of Order 415 which is annexed hereto is a true and correct [copy] of said order.

No. 12. It is admitted that the rate on lumber, logs and staves established by the Railroad Commission of Louisiana in 1904 and 1905 from stations in Louisiana on the Kansas City Southern Railway via its connecting lines to New Orleans, Louisiana, was 10 cents per 100 pounds, and that the tariffs filed with and approved by the I. C. C. for such shipments at such times, interstate, was 15 cents per 100 pounds.

No. 13. That in March, 1905, Friedlander & Oliven delivered to complainant, Kansas City Southern Railway at Leesville, Louisiana, on its line of railroad, three carloads of tank staves, loaded in T. & P. Cars Nos. 7035, 7036 and 6451 to be transported and were consigned to George Gerdes at New Orleans, Louisiana.

No. 14. It is admitted that the affidavits of George Simpson, W. F. Braggins, John D. Wilkinson, William J. Dardis, Joseph Dardis, Charles S. Elms, C. L. Defuentes, W. M. Barrow and James L. Roach together with the exhibits annexed to said affidavits to be found in the printed transcript of the Record 1537 of the U. S. Circuit Court of Appeals for the 5th Circuit and No. 55, Baton Rouge Div. of the Circuit Court for that Circuit, shall be considered as evidence in this case and as the depositions of the said parties, with the right of either party to call a witness to prove isolated or additional facts.

No. 15. That said three cars of rough staves were transported from Leesville, Louisiana, by the K. C. S. Ry. Co. to Shreveport, Louisiana,



and there delivered to its connecting carrier the T. & P. Ry. Co. to be hauled to New Orleans and were so hauled. That on arrival of said freight at New Orleans, the customary notice was given by the carrier to the consignees of arrival; thereupon, the consignees in the month of April, 1905, notified the T. & P. Ry. Co. to deliver said freight to Steamship West Point at Westwego terminal wharf of the T. & P. Ry. Co. That the ship having removed to the city

40 front, deliveries were changed to this place and there the cars were delivered by the T. & P. Ry. Co. to the I. C. Ry. Co. which in turn switched them to the Southern Pacific Ry. which road switched them to the wharf where they were loaded on the Steamship West Point and transported to Hamburg, Germany, the T. & P. Ry. Co. collecting from the consignees freight charges thereon at the rate of 15 cents per 100 pounds. This admission is subject to the affidavit or disposition of Mr. Roach.

No. 16. It is admitted that George Gerdes resides at New Orleans and that his occupation is ship's broker negotiating for space, rates and attending to shipments for consignors in the United States. And that Charles S. Elm and Hub Durselene are stave exporters at New Orleans to foreign ports, and that the staves in which they deal are not treated or manufactured or changed in any way at New Orleans from the original shape in which they are received at New Orleans, and that 98% of shipments handled by them at New Orleans are exported to foreign ports.

No. 17. That the following cars referred to in Exhibit B, attached to the bill arrived in New Orleans and were delivered aboard ship on the dates following:

Car 11575, M. P., arrived July 25, 1905, and delivered to ship, July 27, 1905.

Car 2029, I. M., arrived August 1, 1905, and delivered to Ship Alexandrian, Aug. 14, 1905.

Car 23,167, M. P., arrived Aug. 1, 1905, and delivered to ship Aug. 14, 1905.

Car 23,081, M. P., arrived Aug. 1, 1905, and transferred to New Orleans for belting for delivery to ship, Aug. 7, 1905.

Car 526, M. P., arrived Aug. 9, 1905, delivered to Steamship Colonian, Aug. 25, 1905.

Car 26,721, M. P., arrived Oct. 7, 1905, delivered to Ship Asian, Oct. 18, 1905.

Car 937, M. P., arrived Oct. 7, 1905, and delivered to Ship Asian, Oct. 18, 1905.

Car 2590, M. P., arrived Oct. 7, 1905, and delivered to Ship Louisianian, Nov. 2, 1905.

Car 33,479, M. P., arrived Oct. 7, 1905, and delivered to Ship Asian, Oct. 18, 1905.

Car. 66,068, S. P., arrived Oct. 8, 1905, and delivered to Ship Asian, Oct. 18, 1905.

41 Car 5560, T. P., arrived Oct. 8, 1905, and delivered to Steamship Belgian, Oct. 30, 1905.

Car 84,852, C. P., arrived Oct. 8, 1905, and delivered to Ship Asian, Oct. 18, 1905.

Car 6966, T. P., arrived Oct. 8, 1905, and delivered to Ship Belgian, Oct. 30, 1905.

Car 8977, I. M., arrived Oct. 10, 1905, and delivered to Ship Louisianian, Nov. 2, 1905.

Car 14,024, I. M. and Car 12,070, I. M. and Car 38,323, S. P., arrived here Aug. 1, 1905, ordered to ship's side and unloaded, Aug. 7, 1905.

Car 10,749, I. M., arrived here Aug. 9, 1905, and delivered to ship on October 25, 1905.

Car 7035, T. P., arrived March 30, 1905, ordered transferred to city front and delivered to Steamship West Point, April 4th, 1905.

Car 6451, T. P., same dates.

Car 7036, T. P., same dates.

In lieu of original receipts of ship's officer for cars numbered and named above, it is admitted that such shipments were so received and the dates mentioned in there correspond with the mate's receipts. That no demurrage was offered nor paid by the forwarder or received by the carrier on any of these cars; that in 1905 when these shipments were made the rules of the Railroad Commission of Louisiana allowed four days' free time for unloading after arrival and notification to the consignee at New Orleans, and 20 days where consignments were for export. It is further admitted that each and every one of these shipments paid  $\frac{3}{4}$  cent per 100 pounds to the railroad for unloading charges as was charged on all other export shipments.

No. 18. Plaintiffs offer bill of lading issued by the St. Louis, Iron Mountain and Southern Railway Co. at Olla, Louisiana, dated 7/20/1905, received from Urania Lumber Co. at Olla, consigned to New Orleans, Louisiana, to shipper's order, notify Hub Durselene at New Orleans, shipped in Mo. P. Car 11575, 10 poplar logs; together with the indorsements thereon. And it is agreed that the form of bill of lading of T. & P. 5560 and form of bill of lading covering shipment in Car I. M. 12,070, are samples of the bills of lading in all the shipments made by the St. Louis, Iron Mountain and Southern.

It is further admitted that from the time these shipments  
42 moved from the interior points in Louisiana, under the bill of lading, until arrival at ultimate destination abroad, they were at all times in the actual and physical custody of the various railroad companies; that is to say, from the time of transit at initial points they were in the physical custody of the railroad companies until arrival at New Orleans and from thence to foreign ports or destination were in the physical custody of the steamships.

Complainants rest.

Defendants rest.

Attest:

(Signed)

WM. GRANT, *Spl. Master.*

Testimony in the case closed.

*Bill of Lading Marked A-1*

Filed December 30, 1910, Nunc Pro Tunc As of Date August 12, 1910, Referred to in the Special Master's Report.

Filed April 21, 1910.  
(Signed)

WM. GRANT, *Spl. Master.*

Form, 1132 L.

10-04-20M. NK.

This form of bill of lading is the one prescribed and ordered adopted by the Louisiana Railroad Commission, and is to be used only upon shipments having both origin and destination within the State of Louisiana, and must not be used upon interstate shipments.

St. Louis, Iron Mountain & Southern Railway Co.

GEORGETOWN, LA., STATION, *July 7th, 1905.*

Rates guaranteed:

To ———

Charges Advanced, \$——

Received from Bradford Bros. the following articles, in apparent good order and condition, except as herein below noted marked, consigned, and destined as indicated below. To be transported to ——— and there delivered to ——— consignee or order on

43 payment of the charges herein stipulated. Said transportation service to be performed on the following terms and conditions which are agreed to by both the said carrier and the shipper, viz.:

The above named carrier shall be liable for the loss, damage or unreasonable delay in delivery of the articles above described, unless said carrier shall show that such loss, damage or delay in delivery has been occasioned by accidental or uncontrollable events or by vice, condition or qualities of said things, or by some fault of the shipper.

The said carrier shall have a privilege on said goods for the cost of transportation and for all expenses necessarily incurred by him during transportation in order to preserve the said goods or to complete the transportation thereof.

If it should be necessary for said carrier to deliver said goods to any other carrier in order to complete the transportation thereof, then the rights and liabilities of said connecting carrier shall be as herein provided, and no carrier shall be liable for any loss, damage or delay occurring on the line of any succeeding or preceding carrier, provided the preceding carrier shall prove such delivery to the next connecting carrier.

This bill of lading is given subject to correction as to weights and as to rates and classification, so as to conform to the rates, rules and regulations approved or established by the Railroad Commission of Louisiana.

The parties hereto may either agree upon the value of the things shipped and fix the same herein, or they may agree that in case of claim being made hereunder, the said value shall be fixed by the value at the time and point of shipment or that it shall be fixed by the value at the time and point of delivery.

All notices or claims for loss or damage under this bill of lading shall be presented in writing by the shipper, consignee or party in interest to the nearest agent of the carrier intended to be held responsible therefor, within ninety days from the date of the delivery of the goods, in case of shortage or delivery in a damaged condition, and within ninety days from the date of the shipment of the goods in case no delivery thereof has been made; otherwise, the same shall be barred and conclusively presumed to have been abandoned; provided, that any notice or claim not returned or declined within ninety days after receipt thereof by said railroad company shall be deemed to have been allowed by said company. All suits for loss

44 or damage hereunder shall likewise be barred and conclusively presumed to have been abandoned and waived, unless brought within one year from the date of the shipment.

Whenever goods are loaded by the shipper the carrier may stipulate in said bill of lading by the words "Shipper's Load and Count," that in case or [of] loss or damage, the burden of proof as to quantity and condition of the goods when delivered shall rest upon the shipper.

If delivery be made to the carrier at any other place than an agency station, its liability as carrier shall not commence until actual possession be taken by it of the goods; provided, that the carrier is not chargeable with unreasonable delay in taking possession.

The acceptance by the shipper of this bill of lading shall constitute an assent on his part to all its terms and conditions.

No other stipulations or exemptions shall be inserted in this bill of lading except such as shall have been approved and allowed by the Railroad Commission of Louisiana.

Consigned to Hub Durselene at New Orleans, La.

Marked.  
I. M. S. 12070

List of articles.  
1300 Pipe Staves  
565 West S  
O K

Weight.

S. L. & C.  
A. J. GRAHAM, *Agt.*

Printed with red ink diagonally across face of bill of lading:

"When the goods or packages are sent to a station where the carrier has no agent, the shipper authorizes and directs that the carrier shall, upon arrival of the train, by day or by night, and regardless of the weather, deposit the goods or packages upon the platform whether there shall be any one there to receive them or not, and the shipper agrees that the carrier's liability shall end upon such deposit and that such deposit shall be considered a delivery to the consignee."

Stamped with red ink on face:

( Canceled )  
 ( 8/11 )  
 (Delivery Order Issued)

45 On reverse, written in black ink:

BRADFORD BROS.  
P.

Stamped with red ink:

(Signed)

per pro HUB. DURSELEN.  
CHARLES S. ELMS.

*Bill of Lading Marked A-2.*

Filed December 30, 1910, Nunc Pro Tunc As of Date August 12, 1910, Referred to in the Special Master's Report.

Form 1132 M.

10-1903. SPC.

St. Louis, Iron Mountain & Southern Railway Co., Leased, Operated and Independent Lines.

Valley Division of I. M. & S. Railway.

Rates

Oct. 5, 1905.

To 10c.

Charges Advanced, \$....

Received from H. F. Bradford the following property, in apparent good order, marked and numbered as per margin, to be transported from Olla, La., to New Orleans, La., and delivered to the consignee, or a connecting common carrier. The property aforesaid may pass through the custody of several carriers before reaching its destination, and it is understood as a part of the consideration, for which the said property is received, that the exceptions from liability made by such carriers respectively shall operate in the carriage by them respectively of said property, as though herein inserted at length; and especially that neither of said carriers, or either or any of them, or this Company shall be liable for leak-

|    |  |   |
|----|--|---|
| 46 | If 1st Class.....cts.<br>per 100 lbs.  | age of any kinds of liquids, nor for losses by bursting of casks or barrels of liquids, arising from expansion or other unavoidable causes, breakage of any kind of glass, carboys of acids, or articles packed in glass, stoves and stove furniture, castings, machinery, carriages, furniture, musical instruments, of any kind, packages of eggs; or for loss or damage of hay, hemp, or for rust of iron or iron articles, or for loss or damage of any kind on any article whose bulk requires it to be carried on open cars, or for leakage of grain in bulk, or for damages to personal property of any kind, occasioned from delays from any cause or change of weather, or for loss or damage by fire or for loss or damage on seas, lakes, canals or rivers. And it is further especially understood, that for all loss or damage occurring in the transit of said property, the legal remedy shall be against the particular carrier only in whose custody the said property may actually be at the time of the happening thereof—it being understood that |
|    | If 2nd Class.....cts. per<br>100 lbs.  |   |
|    | If 3rd Class.....cts. per<br>100 lbs.  |   |
|    | If 4th Class..... cts. per<br>100 lbs. |   |

St. Louis, Iron Mountain & Southern Railway Co. Leased, Operated and Independent Lines

in receiving the said property to be forwarded as aforesaid, assumes no other responsibility for its safety or safe carriage than may be incurred on its own road. All goods carried by this company are carried at actual gross weight, excepting such articles as are otherwise provided for in the Tariffs and Classifications.

All property will be subject to necessary coooperation. Carriers will not be accountable for loss in weight arising from unavoidable causes. Claims for damages must be reported by consignee, in writ-

If 5th Class.....cts. per  
100 lbs.

47

.....cts. per  
100 lbs.

.....cts. per  
100 lbs.

48

Flour and Meal .....  
per bbl.

ing, to the delivering line within thirty-six hours after the consignee has been notified of the arrival of the freight at the place of delivery. If such notice is not there given, neither this Company nor any of the connecting or intermediate carriers shall be liable. In the event of the loss of property under the provisions of this agreement, the value or cost of the same at the point of shipment shall govern the settlement.

Notice.—The responsibility of this Company as a common carrier, terminates upon arrival of the property at station or place of delivery. Free storage will be given for forty-eight hours thereafter (exclusive of Sundays and legal holidays) at the risk of the owner; if not removed at the expiration of that time the property will, at the option of the carrier, either be removed and stored in a public ware house, at owner's cost and risk, or will be retained in the carrier's possession, as warehouseman, subject to warehouse charges. If property covered by this bill of lading is destined to a point beyond the lines of this Company, the storage charge will be governed by regulations of the carrier at the place of destination.

Notice is hereby given that there are no agents of the companies at prepay stations, and all liability of the companies, whether as common carriers or as warehousemen, for loss or damage to property destined to prepay stations, shall absolutely cease after same arrives at such stations, and the shipper, by acceptance of this bill of lading, guarantees that the consignee, or his agent, will be present to receive the property on arrival at such stations.

Notice.—In accepting this contract, the shipper or other agent

of the owner of the property carried, expressly accepts and agrees to all its stipulations and conditions.

Beef, Pork and Fish.....  
per bbl.

Special ..... per..

Consigned to S. O. Notify Hub Durselin at New Orleans, La.

Weight and classification subject to correction.

S  
Marked.  
T. & P.  
5560.

List of Articles.  
One Car Staves

Weight.

A. B. BEARDSLIE.  
W.

Stamped with red ink diagonally across face:  
( Canceled )  
(Delivery Order Issued)

Marked with blue pencil across face of stamp:  
10/12

On reverse (written with lead pencil):  
H. L. BRADFORD.  
Per B.

Written with black ink:  
Deliver Mate's Receipts to Chas. S. Elms.

CHARLES S. ELMS.

A-2.

Filed April 21, 1910.  
(Signed)

WM. GRANT,  
*Spl. Master.*



49      *Copy of Order Fixing Rates, Marked A-3.*

Filed December 30, 1910, as of Date Aug. 12, 1910; Referred to in  
the Special Master's Report.

Railroad Commission of Louisiana.

Baton Rouge.

Order No. 415.

A-3.

Filed April 21, 1910.  
(Signed)

WM. GRANT, *Spl. Master.*

THE KERN COMPANY, Limited, et als.

vs.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY  
and KANSAS CITY SOUTHERN RAILWAY COMPANY et als.

Rates on Staves.

On November 15th, 1904, the Commission entered an order against the Kansas City Southern Railway Company, and its connecting lines, the Louisiana Western Railroad Company, et als., establishing a rate on staves and articles taking the same rates under the Western Classification, from all stations on said railway to New Orleans, of ten cents per one hundred pounds. The Kansas City Southern Railway Company petitioned the Commission for rehearing on the said order, on the grounds that the rate established by the Commission in the said Order No. 410, was unreasonably low and burdensome on defendants. This petition was granted and the rehearing took place at Baton Rouge, Louisiana, December 21st, 1904, the petitioning company being represented.

After a full rehearing of the facts in this case, the Commission is still of the opinion that the rate established by its Order No. 410, viz., ten cents per one hundred pounds on staves and articles taking same rate under the Western Classification No. 37, now in effect in Louisiana, are just and reasonable rates, and afford the companies partaking in same an adequate compensation for the service performed.

It is therefore ordered, that the rate named and established  
50      in Order No. 410, entered at Baton Rouge, Louisiana, November 15th, 1904, is hereby affirmed.

By order of the Commission.

Baton Rouge, Louisiana, December 21, 1904.

C. L. DE FUENTES, *Chairman.*  
W. L. FOSTER,  
OVERTON CADE,

*Commissioners.*

[SEAL.]      (Signed)

W. M. BARROW, *Secretary.*

I, W. M. Barrow, secretary of the Railroad Commission of Louisiana, do hereby certify that the above and foregoing is a true and correct copy of Order No. 415, entered and adopted by the Railroad Commission of Louisiana, on December 21, 1904.

Given over my official signature and the seal of the Railroad Commission of Louisiana, this the 11th day of April, 1910.

[SEAL.] (Signed) W. M. BARROW, *Secretary*.

*Exceptions of the Texas & Pacific Railway Company to the Master's Report.*

Filed August 12, 1910.

United States Circuit Court, Eastern District of Louisiana.

No. 55.

TEXAS & PACIFIC RAILWAY COMPANY, et als.

vs.

RAILROAD COMMISSION OF LOUISIANA.

Exceptions to Master's Report.

Exceptions of the Complainant, The Texas & Pacific Railway Company, to the Master's Report and Conclusions of Law in the Above Action.

The complainant, The Texas & Pacific Railway Company, excepts to the said master's report in the above entitled and numbered cause in so far as the conclusions of law reached by him on the facts as found by him, the said conclusions of law being erroneous and contrary to the facts as found by him in that under the said facts so found the said shipments of staves made over the line of your  
51 complainant in question in this case were not intrastate shipments and controlled by the tariffs filed with and directed by the defendant, Railroad Commission, but on the contrary were export shipments, regulated and controlled by the rates filed with and approved by the Interstate Commerce Commission.

Appearer further excepts to said report in so far as it recommends that the bill of complaint herein of complainants be dismissed.

(Signed) HOWE, FENNER, SPENCER & COCKE,

*Solicitors for The Texas & Pacific Railway Company.*

*Exceptions of the St. Louis, Iron Mountain & Southern Railway Company to the Master's Report.*

Filed August 12, 1910.

United States Circuit Court, Eastern District of Louisiana.

No. 55.

TEXAS & PACIFIC RAILWAY COMPANY et als.

vs.

RAILROAD COMMISSION OF LOUISIANA.

Exceptions to Master's Report.

Exceptions of the Complainant, St. Louis, Iron Mountain & Southern Railway Company to the Master's Report and Conclusions of Law in the Above Action.

The complainant, the St. Louis, Iron Mountain & Southern Railway Company, excepts to the said master's report in the above entitled and numbered cause in so far as the conclusions of law reached by him on the facts as found by him, the said conclusions of law being erroneous and contrary to the facts as found by him in that under the said facts so found the said shipments of staves made over the line of your complainant in question in this case were not intra-state shipments and controlled by the tariffs filed with and directed by the defendant, Railroad Commission, but on the contrary, were export shipments regulated and controlled by the rates filed with and approved by the Interstate Commerce Commission.

52      Appearer further excepts to said report in so far as it recommends that the bill of complaint herein of complainants be dismissed.

(Signed)

FRED G. HUDSON,  
*Solicitor for St. Louis, Iron Mountain &  
Southern Railway Co.*

*Exceptions of the Kansas City Southern Railway Company to the Master's Report.*

Filed August 12, 1910.

United States Circuit Court, Eastern District of Louisiana.

No. 55.

TEXAS & PACIFIC RAILWAY COMPANY et als.

vs.

RAILROAD COMMISSION OF LOUISIANA.

Exceptions to Master's Report.

Exceptions of the Complainant, Kansas City Southern Railway Company to the Master's Report and Conclusions of Law in the Above Action.

The complainant, the Kansas City Southern Railway Company excepts to the said master's report in the above entitled and numbered

cause insofar as the conclusions of law reached by him on the facts as found by him, the said conclusions of law being erroneous and contrary to the facts as found by him in that under the said facts so found the said shipments of staves made over the line of your complainant in question in this case were not intrastate shipments and controlled by the tariffs filed with and directed by the defendant, Railroad Commission, but on the contrary, were export shipments regulated and controlled by the rates filed with and approved by the Interstate Commerce Commission.

Appearer further excepts to said report in so far as it recommends that the bill of complaint herein of complainants be dismissed.

(Signed)

ALEXANDER & WILKINSON,

*Attorneys for K. C. S. Ry. Company.*

53      *Motion and Order Fixing Exceptions to Master's Report.*

Entered and Filed October 15th, 1910.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, New Orleans Division.

No. 55.    Baton Rouge Div.

TEXAS & PACIFIC RAILWAY Co. et als.

vs.

RAILROAD COMMISSION OF LOUISIANA.

On motion of Walter Guion, Atty. General of Louisiana, and F. H. McCaleb of counsel for defendants herein, it is ordered by the Court that the exceptions to the master's report and the final hearing be set for trial on Saturday the 12th day of November, 1910, at 11 o'clock A. M., and that Fred G. Hudson, Alexander & Wilkinson and Howe, Fenner, Spencer & Cocks, counsel of record for said complainants be notified thereof.

54      *Hearing, Notes of Evidence and Submission of Case.*

Extract from the Minutes.

November Term, 1909.

NEW ORLEANS, SATURDAY, November 12, 1910.

Court met pursuant to adjournment.

Present—Hon. Rufus E. Foster, District Judge.

No. 55.    (B. R. D.)

TEXAS & PACIFIC RAILWAY Co. et als.

vs.

RAILROAD COMMISSION OF LOUISIANA.

This cause came on this day to be heard upon the exceptions to the master's report, filed herein by the complainants on August 12th, 1910.

Present—Howe, Fenner, Spencer & Cocke, Solicitors for the Texas & Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company, Exceptors and Complainants.

“ Alexander & Wilkinson, Solicitors for the Kansas City Southern Railway Company, Exceptor and Complainant.

“ Walter Guion, Attorney General and E. Howard McCaleb, Solicitors for Defendant.

Whereupon counsel for complainants offered the following evidence on behalf of said complainants:

“Counsel for complainants offer, introduce and file in evidence the admission of the parties, numbered from 1 to 18, inclusive, filed before the master.

2nd. The deposition of George H. Schweitzer.

3rd. The affidavits of George Simpson, William F. Braggins and John D. Wilkinson.

4th. Exhibits A, B, C, D, E, F and H annexed to the bill of complaint. Exhibits A and B being forms of bill of lading used in the shipment of the St. Louis and Iron Mountain R. R. Co. and the Texas and Pacific R. R. Co.

55 5th. Bills of lading marked A-1 and A-2 being the bills of lading which were used in the shipments originating on the Kansas City Southern R. R. Co.

6th. Copies of the order of the Railroad Commission fixing the rates.

Counsel for defendant also offered the following evidence on behalf of said defendant.

1st. The mutual admissions of the parties numbered from 1 to 18, inclusive, marked A-4 and referred to in a note at the foot of the master's report.

2nd. The affidavits of William J. Dardes, Joseph Dardes, Charles S. Elm, William [William,] C. L. De Fuentes, W. M. Barrow and James L. Roach filed in the cause.

3rd. Exhibits A, B, C, D, E, F and H annexed to the bill of complaint.

4th. Copy of order fixing the rates, marked A-3.

5th. Exhibit B attached to the affidavit of Charles S. S. Elm.

6th. Exhibit A annexed to the affidavit of William Guion.

AGREEMENT.—It is agreed between counsel for complainants and counsel for defendant, the Railroad Commission, that all the evidence that was before the master and all of the exhibits considered by him are considered as evidence introduced at this time.

And was argued by counsel for the respective parties and submitted when the Court took time to consider.

*Opinion.*

Filed December 17, 1910.

United States Circuit Court, Eastern District of Louisiana.

In Equity.

No. 55, Baton Rouge Division.

THE TEXAS & PACIFIC RAILWAY CO., THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO., and The Kansas City Southern Railway Co.

VS.

RAILROAD COMMISSION OF LOUISIANA.

It appears that the Texas & Pacific Railway Co., the St. Louis, Iron Mountain & Southern Railway Co. and the Kansas City Southern Railway Co., complainants herein, had filed with the Interstate Commerce Commission a schedule of rates for the carriage from points in Louisiana to New Orleans, on export shipments. The Railway Commission of Louisiana had also fixed a schedule of different and lower rates on local shipments between the same points. By order of the Railway Commission of Louisiana, four days' free storage was allowed on local shipments and twenty days on shipments intended for export.

The railroads acquiesced in allowing 20 days' free storage on freight intended for export and also delivered same at ship's side free of charge for switching.

Thereafter, some twenty-one cars of staves and poplar logs intended for export were shipped from interior points in Louisiana to New Orleans on bills of lading of substantially the local form. On arrival the consignees demanded and received the free storage accorded export shipments, and in due course, at their request, the freight was switched to ship's side without additional cost, and was never out of the physical possession of the carriers until actually delivered to the ship.

In collecting charges the said railroads applied the higher rate fixed by the Interstate Commerce Commission for export shipments. On complaint of the consignees the Railroad Commission of Louisiana assessed certain fines, exceeding two thousand dollars against complainants, and complainants seek by this proceeding to have the collection of those fines enjoined.

It is contended by complainants that the said shipments constituted foreign commerce, and therefore the Interstate Commerce Commission had jurisdiction over their movement, and  
57 the Louisiana Railroad Commission had not. They rely upon the cases of the Daniel Ball, 10 Wall. 557; Coe v. Erroll, 116 U. S., 524; Swift & Co. v. U. S., 196 U. S., 375; Armour Packing

Co. v. U. S., 209 U. S., 56; General Oil Co. v. Crane, 209 U. S., 211, and Cutting v. Florida R. R. & Nav. Co., 46 Fed., 641, and various other decisions to the same effect not necessary to more fully cite.

The defendants, on the other hand, say the shipments must be considered intrastate commerce, that the cases above cited do not apply except the Cutting case and this decision is overruled by the case of the Gulf, Colorado & Sante Fe R. R. Co. v. Texas, 204 U. S., 403, hereafter referred to as the Texas case, which must be considered the controlling authority.

On the facts as found by him, which are not disputed, the master adopted the contention of the defendants, and, basing his conclusions of law entirely on the Texas case, has recommended that the bill be dismissed. The matter is before me on exceptions of complainants to the master's conclusions of law, and the sole question to be determined is whether the shipments constitute intrastate or foreign commerce.

Undoubtedly, the Interstate Commerce Commission has jurisdiction and authority to regulate rates on freight actually moving in foreign commerce, for that part of the carriage through the United States, whether such transportation be interstate or wholly within one state. So, too, the Railroad Commission of Louisiana has authority to regulate rates of transportation on all shipments beginning and ending in the state. In their respective spheres each is supreme, and either can infringe the authority of the other. But it is plain that both railroad and shipper should be enabled to decide with certainty as to which rules to obey when there is conflict between them, and neither should be permitted to take advantage of the incidental conditions imposed or privileges allowed, in connection with one rate when applying the other rate to the shipment.

Under the bills of lading, in the instant case, the consignee might have demanded delivery at New Orleans on payment of the lower rate, but he would have received the goods at the depot or the usual place of delivery, and the railroad was under no obligation to deliver anywhere else; and he would not have been entitled to more than four days' free storage nor to any free belting or switching at all. Instead of doing so, however, he notified the railroad to hold the goods for export and the carrier acquiesced, allowed free  
58 storage on the cars at an average of about fourteen days, a period far beyond that allowed on local shipments, and subsequently belted the cars to ship's side without extra charge.

I do not consider the facts in the Texas case analogous. There an interstate shipment terminated at Texarkana, Texas. The freight was paid. Delivery was accepted and the goods changed ownership. An entirely new shipment was then made to Golthwaite, Texas. The goods were intended for consumption in Texas, and the shipment began and ended in Texas. The owners of the goods intended to make an intrastate shipment for the purpose of obtaining the local rate. They made their contract of carriage accordingly, and the whole contract was contained in the bill of lading. By the intention of the owners, by the contract of carriage and by the ultimate disposition of the goods the shipment was intrastate.



In the instant case the shipments originated in Louisiana, but they did not terminate at New Orleans. The consignees did not accept delivery at all. For the purpose of obtaining the free storage and free switching allowed only in connection with the export rate they notified the railroad to hold the goods for export, and subsequently required delivery at ship's side to the connecting carrier. In all of this the railroad acquiesced. The stoppage at New Orleans was merely incidental to the ultimate exporting of the goods. New Orleans was never intended to be, and in fact, never did become the final destination. From the time the goods started from the interior point they were intended for foreign consumption, and there was one continuous passage until they reached a destination out of the United States. By the intention of the owners and the ultimate disposition of the goods, it was an export shipment. In every respect the facts differ from those of the Texas case except as to the form of the bill of lading.

In the Texas case I do not understand the Supreme Court intended to do more than decide the case presented on the facts as found by the Texas Courts, and I do not consider the decision at all in conflict with those cited. The whole contract of carriage was expressed in the bill of lading, yet the Supreme Court, in holding that the contract determined the character of the shipment, was careful not to confuse the bill of lading with the contract. Necessarily, a bill of lading like any other written contract may be altered or amended, by subsequent verbal agreement, except as to things against public policy or prohibited by law or valid regulation.

59 In the case at bar, had the railroad issued through bills of lading from the interior points to the foreign ports, it is conceded by defendants the State Commission could not have imposed the fines. Yet, in that case the service would have been exactly the same as was here rendered, with the exception that the railroad would have selected the ocean carrier instead of the shipper doing so.

I can see no difference in the two cases. It is the trend of modern legislation to allow the shipper great latitude in routing his goods. In the Statute of 1910, known as the Mann-Elkins Act, the interstate shipper is given the right to designate over which of two or more connecting roads his property shall be transported to destination. (Act of June 18, 1910, Sec. 12, par. 5.) It is manifestly of great benefit to the exporter to be allowed to accumulate freight at a sea port and to hold it for a reasonable time without additional cost. Ocean rates vary according to the supply and demand, and these privileges advantage the exporter in securing favorable rates for the water carriage. I can conceive of no reason why the railroad and shipper, instead of getting out a through bill of lading to the foreign port, should not agree to apply the export rate, with its incidental privileges to all shipments which are, in reality, intended for export and to allow the shipper to select the ocean carrier, provided, of course, no fraud or violation of law or public policy is contemplated. If they can do so by express agreement they can certainly do so by tacit understanding or acquiescence.



In the instant case both parties have treated the shipments as export shipments and that is what they in fact were. It is not even hinted there was any evasion of law or violation of public policy by their so doing. Therefore, I do not think the form of the bill of lading should absolutely fix the status of the freight, as I consider the contract of carriage should be held to be what the parties really intended it to be.

Notwithstanding, my great respect for the opinion of the master in this case I must disagree with him, as I am convinced that as a matter of fact, as well as by the intention of the owners, and the contract of carriage the freight, in the instant case, was an export shipment actually moving in foreign commerce, and the Railroad Commission of Louisiana was without jurisdiction. I am not called upon to reconcile the difference between the rates nor to pass upon the reasonableness of either. If either is to be amended it is entirely for the respective Railroad Commission to say so. On 60 the facts of this case, as I understand them, I do not see how the railroads could have demanded or received any other rate than the one they collected.

There will be a decree as prayed for, perpetually enjoining the collection of fines imposed.

*Decree.*

Filed December 22, 1910.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

In Equity. No. 55.

THE TEXAS & PACIFIC RAILWAY CO., THE ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO., and THE KANSAS CITY SOUTHERN RAILWAY CO.

vs.

RAILROAD COMMISSION OF LOUISIANA and WALTER GUION, Attorney General.

This cause came on for final hearing on the exceptions filed by the complainants to the report of William Grant, Esquire, Special Master, at this term, and was argued by counsel; and thereupon and upon consideration thereof and for the reasons assigned in the written opinion of the Court filed herein, it is ordered, adjudged and decreed that the exceptions to the report of William Grant, Esquire, Special Master, filed by complainants be and the same are hereby sustained and that the said report be and the same is hereby disapproved, reversed and overruled.

That the preliminary injunction heretofore issued, restraining and prohibiting the Railroad Commission of Louisiana and Walter Guion, Attorney General, of the State of Louisiana, from in any wise attempting to enforce its said orders of November 10th, 1905,

designated as Orders No. 476 and 477, and from in any wise attempting to collect and from directing the collection of the penalties and fines imposed upon complainants by said orders; and further restraining and prohibiting the Railroad Commission of Louisiana and Walter Guion, Attorney General of the State of Louisiana, from imposing or attempting to impose upon and from collecting or attempting to collect from complainants any other or further penalties for the non-observance of its Orders No. 410, dated November 15, 1904; No. 419, dated December 21st, 1904, and No. 445, 61 dated May 5, 1905, in respect of and in connection with shipments of logs, staves and lumber destined for and being subjects of foreign and interstate commerce, which have since the promulgation of said Orders No. 410, 419 and 445 and since the promulgating of Orders Nos. 476 and 477 been carried by complainants severally or jointly from points of shipment in Louisiana, taking or to which apply the rate established, published and filed with the Interstate Commerce Commission, by the complainants, be and the same is hereby made perpetual.

That the said orders of the Railroad Commission of Louisiana, designated as Nos. 410, 419 and 445, in so far as construed by the Railroad Commission of Louisiana to be applicable to freight actually moving in foreign commerce are illegal, null and void; that the Railroad Commission of Louisiana was without power or authority to impose the fines so imposed on complainants by its Orders No. 476 and 477, dated November 10, 1905, and that said orders are therefore null and void.

It is further ordered, adjudged and decreed, that defendants pay all costs.

Thus rendered and signed this 22nd day of December, 1910.

(Signed)

RUFUS E. FOSTER,

*United States Judge.*

*Motion and Order of Appeal.*

Entered and Filed December 30th, 1910.

In the Circuit Court of the United States, Eastern District of Louisiana, Baton Rouge Division.

In Equity. No. 55.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

vs.

THE RAILROAD COMMISSION OF LOUISIANA et al.

*Motion of Appeal.*

On motion of Walter Guion, Attorney General of Louisiana, and of E. Howard McCaleb, of counsel for defendants, Railroad Commission of Louisiana, and Walter Guion, Attorney General of Louisiana,

62 defendants, made in open Court, suggesting that the said defendants each and all of them are aggrieved by the final decree herein made on the 22nd day of December, A. D. 1910, maintaining the exceptions to the master's report and granting the relief prayed for by complainants perpetuating the injunction heretofore issued with costs against defendants, believes there is error therein to their prejudice and desire to appeal therefrom to the United States Circuit Court of Appeals, Fifth Circuit, and have filed an assignment of errors.

It is ordered by the Court that the defendants, Railroad Commission of Louisiana, and Walter Guion, Attorney General of Louisiana, be granted an appeal from said final decree in favor of complainants and against defendants, to the United States Circuit Court of Appeals, to operate as a supersedeas, returnable within thirty days on giving bond in the sum of two hundred dollars with surety and conditioned as the law directs.

New Orleans, December 30, 1910.

(Signed)

RUFUS E. FOSTER, *Judge*.

*Assignment of Errors.*

Filed December 30, 1910.

In the Circuit Court of the United States, Eastern District of Louisiana, Baton Rouge Division.

In Equity. No. 55.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

vs.

THE RAILROAD COMMISSION OF LOUISIANA et al.

*Assignment of Errors.*

Comes now the Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, by their counsel, and respectfully represent that they, each and all feel aggrieved by the final decree of the Court in the above entitled and numbered cause and assign thereto, as follows:

The Court erred:

63 First. In entering a final decree in favor of complainants and against defendants, perpetuating the injunction and granting other relief prayed for in the original and supplemental bills of complaint, and in maintaining and not overruling the exceptions to the master's report.

Second. In holding that the shipments referred to in the original and supplemental bill of complaint and in the evidence of the case, were not intrastate shipments or that the Railroad Commission of Louisiana had no jurisdiction or authority over them, or that said

Railroad Commission of Louisiana had no power to impose the fines in violation of its orders.

Third. In holding that the intention of the shipper to ship the logs, staves, headings, etc., before and after their arrival in New Orleans, from New Orleans to foreign ports or that they were in fact exported, is controlling as against the authority and laws of this state and of the Railroad Commission of Louisiana over persons and property in the absence of any evidence of a common control, management or arrangement for a continuous carriage or shipment between complainants and any other common carrier, or between the shipper and complainants and the ocean carriers from north and west Louisiana points to foreign ports via New Orleans.

Fourth. In holding as against the Constitution of the United States and against Clause 3, of Section 8 of Art. 1 of said Constitution, and against the Act of Congress to Regulate Commerce, as amended June 29th, 1906, and April 13th, 1908, under the admitted facts, that there was no common control, management or arrangement directly or indirectly for a continuous carriage or shipment between complainants or any other common carrier to transport the property from any point within to any point without the state.

Fifth. In failing and refusing to hold that the Railroad Commission of Louisiana had jurisdiction over said shipments, or that the intention of the shipper could not take it away; and that the said Commission had authority to impose fines upon complainants for violation of its orders, and that the contract of shipment was complete upon delivery to consignees of the property in New Orleans; and that the agency of complainants as forwarders for said shippers could not change the completed contract of shipment; and that the intention of shipper or consignee could not convert the contract for local shipment into a contract for interstate or foreign shipment.

64 Sixth. In failing and refusing to follow the decision of the Supreme Court of the United States, *Gulf, Colorado & Santa Fe Railway Co. vs. Texas*, 204 U. S., 412, and other cases of equal application, and in failing to overrule the exceptions to the master's report and rendering a final decree in favor of defendants dismissing the original and amended bills of complaint and dissolving the writ of injunction herein issued.

Wherefore, the said Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, defendants, pray the Honorable Court to examine and correct the errors assigned, and for a reversal of the judgment and decree of the Honorable the Circuit Court of the United States for the Eastern District of Louisiana, entered in the above entitled and numbered cause.

(Signed)

WALTER GUION,

*Attorney General of Louisiana.*

(Signed)

E. HOWARD McCALEB,

*Attorneys and Counsel for Defendants.*

*Bond for Appeal.*

Filed December 30, 1910.

Know all men by these presents, That we, Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, as principal, and Daniel Wendling, as surety, are held and firmly bound unto Texas & Pacific Railway Company, St. Louis & Iron Mountain & Southern Railway Company and the Kansas City Southern Railway Company in the full and just sum of two hundred (\$200.00) dollars to be paid to the said Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company and Kansas City Southern Railway Company, certain attorney, executors, administrators or assigns to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents. Sealed with our seals and dated this 30th day of December, in the year of our Lord, one thousand nine hundred and ten.

Whereas, lately at a session of the United States Circuit Court, Fifth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, Kansas City Southern Railway Company and The Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, No. 55 of the docket of said United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division, a final decree was rendered against the said Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, and the said Railroad Commission of Louisiana, having obtained an order of appeal and filed a copy thereof in the clerk's office of the said Court to reverse the final decree in the aforesaid suit, and a citation directed to the said Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company & Kansas City Southern Railway Company citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, shall prosecute said appeal to effect and answer all damages and costs if they or each of them fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of:

[SEAL.] (Signed)

RAILROAD COMMISSION OF  
LOUISIANA,

(Signed)

Per J. J. MEREDITH, *Chrm'n.*

[SEAL.]

E. HOWARD McCALEB,

[SEAL.]

(Signed)

PERCY JOS. HEINS,

WALTER GUION,

(Signed)

*Attorney General of Louisiana.*

DANIEL WENDLING.

Approved by:

(Signed) RUFUS E. FOSTER, *Judge.*

UNITED STATES OF AMERICA,

*Eastern District of Louisiana, ss:*

Personally appeared. Daniel Wendling, who being duly sworn, deposes and says that he is the surety on the within bond, that he resides at 316 South Broad Street, City of New Orleans, State of Louisiana, and is worth the full sum of two hundred (\$200.00) dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed)

DANIEL WENDLING.

66 Subscribed and sworn before me this 30th day of December, 1910.

[SEAL.]

(Signed) HY. J. LOISEL,

*Deputy Clerk, U. S. Circuit Court.*

[Indorsed:] U. S. Circuit Court, Eastern District of Louisiana. No. 55, Baton Rouge Division. The Texas & Pacific Railway Company, et als., vs. Railroad Commission of Louisiana, et al. Bond.

*Stipulation and Waiver of Citation.*

Filed December 30th, 1910.

In the Circuit Court of the United States for the Eastern District of Louisiana, Baton Rouge Division.

In Equity. No. 55.

THE TEXAS &amp; PACIFIC RAILWAY COMPANY et al.

vs.

THE RAILROAD COMMISSION OF LOUISIANA et al.

*Stipulation and Waiver of Citation.*

It is hereby stipulated and agreed between the respective parties, through their counsel, that, as most of the pleadings, documents, evidence and papers are now on file and printed in Transcript of Record No. 1537 of the United States Circuit Court of Appeals that the transcript of appeal in this case shall be made up of all pleadings, documents, evidence and papers that have been filed since the 8th day of February, 1906, that is to say, the demurrer, the judgment overruling the demurrer, the answer, the replication thereto, the order of reference to William Grant, Master, the evidence and testimony had taken before the master, admissions as to evidence, notes of evidence and exhibits made part of said evidence and testimony, the master's report, exceptions to the master's report, opinion of the Circuit Court, final decree, motion and bond of appeal and assignment of errors, and this stipulation, it being also understood that the

printed transcript in No. 1537, now on file in the United States Circuit Court of Appeals, shall form part of this transcript and shall be used and considered in said Appellate Court without the necessity of the clerk of this Court retranscribing the same.

67 It is further stipulated that citation of appeal and service of citation of appeal be and the same are hereby waived.

New Orleans, December —, 1910.

(Signed)

HOWE, FENNER, SPENCER &  
COCKE,

*Solicitors for Complainant, The Texas &  
Pacific Railway Company.*

(Signed)

WALTER GUION,

*Attorney General,*

(Signed)

E. HOWARD McCALEB,

*Solicitors for Defendants.*

*Stipulation and Waiver of Citation.*

Filed December 30th, 1910.

In the Circuit Court of the United States for the Eastern District of Louisiana, Baton Rouge Division.

In Equity. No. 55.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

vs.

THE RAILROAD COMMISSION OF LOUISIANA et al.

*Stipulation and Waiver of Citation.*

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68 It is further stipulated that citation of appeal and service of citation of appeal be and the same are hereby waived.

New Orleans, December —, 1910.

(Signed)

F. G. HUDSON,

*Solicitor for Complainant, The St. Louis,  
Iron Mountain & Southern Railway Company.*

(Signed)

WALTER GUION,

*Attorney General,*

(Signed)

E. HOWARD McCALEB,

*Solicitors — Defendants.*

*Stipulation and Waiver of Citation.*

Filed December 30th, 1910.

In the Circuit Court of the United States for the Eastern District of Louisiana, Baton Rouge Division.

In Equity. No. 55.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

vs.

THE RAILROAD COMMISSION OF LOUISIANA et al.

*Stipulation and Waiver of Citation.*

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69 It is further stipulated that citation of appeal and service of citation of appeal be and the same are hereby waived.

New Orleans, December —, 1910.

(Signed)

ALEXANDER & WILKINSON,

*Solicitors for Complainant, The Kansas  
City Southern Railway Company.*

(Signed)

WALTER GUION, *Attorney General,*

(Signed)

E. HOWARD McCALEB,

*Solicitors for Defendants.*



70

[*Clerk's Certificate.*]

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern  
District of Louisiana.

CLERK'S OFFICE.

I, Henry J. Carter, clerk of the Circuit Court of the United States for the Fifth Circuit and Eastern District of Louisiana, do hereby certify that the foregoing 146 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had and assignments of errors, together with all the evidence adduced on the trial of the case of The Texas & Pacific Railway Company, The St. Louis, Iron Mountain & Southern Railway Company and The Kansas City Southern Railway Company versus The Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, No. 55 of the Docket of the Baton Rouge Division of said Court.

Witness my hand and the seal of said Court at the City of New Orleans, this 2nd day of January, A. D. 1911.

[SEAL.]

H. J. CARTER, *Clerk,*  
By W. B. DONOVAN,  
*Deputy Clerk.*

71 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing printed record of 70 pages, in the case of Railroad Commission of Louisiana et al., appellants, against The Texas & Pacific Railway Company et al., appellees, numbered 2167, was printed under my supervision, and is identical with the printed records upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 16th day of June, A. D. 1911.

[Seal United States Circuit Court of Appeals,  
Fifth Circuit.]

CHARLES H. LEDNUM,  
*Clerk of the United States Circuit Court of Appeals.*

*Transcript of Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 1537.

THE RAILROAD COMMISSION OF LOUISIANA et al., Appellants,  
versus

THE TEXAS & PACIFIC RAILWAY COMPANY et al., Appellees.

Appeal from the Circuit Court of the United States for the Eastern  
District of Louisiana.

[Original Record filed Feb. 8, 1906.]

U. S. Circuit Court of Appeals. Filed Feb. 15, 1906. Charles H.  
Lednum, Clerk.

73 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

In Equity.

No. 55. Baton Rouge Division.

THE TEXAS & PACIFIC RAILWAY COMPANY, THE ST. LOUIS, IRON  
Mountain & Southern Railway Company, and The Kansas City  
Southern Railway Company, Appellees,

versus

THE RAILROAD COMMISSION OF LOUISIANA and WALTER GUION,  
Attorney General of Louisiana, Appellants.

Howe, Spencer & Cocke, Esqrs., for the Texas & Pacific Railway  
Company.

Hudson, Potts & Bernstein, Esqrs., for the St. Louis, Iron Moun-  
tain & Southern Railway Company.

Alexander & Wilkinson, Esqrs., for the Kansas City Southern  
Railway Company, Appellees.

Hon. Walter Guion, Attorney General of Louisiana, for the Rail-  
road Commission of Louisiana, and the Attorney General of Louis-  
iana, Appellants.

Appeal from the Circuit Court of the United States for the Eastern  
District of Louisiana, to the United States Circuit Court of Ap-  
peals for the Fifth Circuit, Returnable Within Ten (10) Days  
from the Twenty-ninth (29th) Day of January, A. D. 1906, at the  
City of New Orleans, State of Louisiana.

*Transcript of Appeal from Decree on Application of Complainant  
for Preliminary Injunction.*

74

*Bill of Complaint.*

Filed December 4, 1905.

United States Circuit Court, Eastern District of Louisiana, Baton  
Rouge Division.

No. 55. In Equity.

THE TEXAS & PACIFIC RAILWAY CO., THE ST. LOUIS, IRON MOUN-  
tain & Southern Railway Co., and The Kansas City Southern  
Railway Co.

VS.

THE RAILROAD COMMISSION OF LOUISIANA.

To the Judges of the Circuit Court of the United States for the Fifth  
Circuit and Eastern District of Louisiana, Holding Sessions at  
Baton Rouge, in Equity:

The Texas & Pacific Railway Company, a corporation created by  
and organized under and in pursuance of certain public acts of Con-  
gress of the United States, to-wit, chapter 122 of the Public Laws of  
the United States of the Year 1871; chapter 132 of the Public Laws  
of the United States of the Year 1872; chapter 257 of the Public  
laws of the United States of the year 1873, and chapter 476 of the  
Public Laws of the United States of the Year 1874; the St. Louis,  
Iron Mountain & Southern Railway Company, a corporation under  
the laws of the State of Missouri, and a citizen of said State; and the  
Kansas City Southern Railway Company, a corporation under the  
laws of the State of Missouri, and a citizen of said State, bring this  
their bill against the Railroad Commission of Louisiana, a body  
politic and corporate, created by and under the constitution and laws  
of the State of Louisiana, and having its domicile at Baton Rouge,  
in the Eastern District of Louisiana, and in the Baton Rouge division  
of said district, and of which C. L. De Fuentes is chairman, and all  
members of which are citizens of the State of Louisiana. And there-  
upon your orators complain and say:

First. That your orator, the Texas & Pacific Railway Company,  
having been created and organized by, under and pursuant to certain  
laws of the United States, hereinabove specifically set forth, has ac-  
quired, completed, possessed and operated a line of railway from El  
Paso, in the State of Texas, to New Orleans, in the State of Louisiana,  
and has been duly operating the same upwards of twenty  
75 years last past under its charters, grants, franchises and acqui-  
sitions, and the said railway has been operated and used, and  
is now being operated and used, as a medium of interstate and for-  
eign commerce, whereby freight of various kinds destined for export,

including all kinds of logs, lumber and staves, is carried from points in Louisiana and Texas to the port of New Orleans, and there exported; and as a medium for the transportation of the United States mail, and otherwise as an important Federal agency.

Second. That your orator, the St. Louis, Iron Mountain & Southern Railway Company, possesses and operates a line of railway extending in part from St. Louis in the State of Missouri, to the City of Texarkana, in the States of Arkansas and Texas; and in part from said St. Louis, in the State of Missouri, to Alexandria, in the State of Louisiana; and said line of railway is used for the carriage of, and is a medium of interstate and an instrument of foreign commerce.

Third. That your orator, the Kansas City Southern Railway Company, possesses and operates a line of railway extending in part from Kansas City, in the State of Missouri, to Shreveport, in the State of Louisiana, Parish of Caddo; and said line of railway is used for the carriage of, and is a medium of interstate, and an instrument of foreign commerce.

Fourth. That the said Railroad Commission of Louisiana has been created and established by and under the provisions of the Constitution of the State of Louisiana of the year 1898, articles 283 to 289, inclusive, which articles undertake to confer upon said commission the power to adopt, change or make reasonable and just rates and charges, and power to govern and regulate the freight and passenger tariffs established on and by the different railroads doing business as common carriers in the State of Louisiana; and which said articles also provide that if any railroad company be dissatisfied with any order adopted by the commission, it may bring suit against the commission, setting forth the cause of *abjection* [objection] to such order, in a Court of competent jurisdiction at the domicile of the commission; and the question of whether an order made by said commission is reasonable or legal is declared to be a judicial question.

Fifth. That your orator, the St. Louis, Iron Mountain & Southern Railway Company was, during the year 1905 and at the times hereinafter mentioned, engaged in the State of Louisiana in the carriage of freight and passengers for hire, and as such common carrier operated a line of railway which connected with the line of your orator. The Texas & Pacific Railway Company, at Alexandria, in the Parish of Rapides, Louisiana; and your orator, the Kansas City Southern Railway Company, was during the said year 1905, and at the times hereinafter mentioned, engaged in carrying passengers and freight for hire in the State of Louisiana as a common carrier, and as such carrier operated a line of railway which connected with the line of your orator, the Texas & Pacific Railway Company, at Shreveport, in the Parish of Caddo, Louisiana.

Sixth. On the 25th day of May, 1905, the said Railroad Commission of Louisiana put into effect and promulgated a certain order, designated as Order No. 445, a copy of which is annexed to and made part of this bill for greater certainty, and is marked "Exhibit A" thereof. By the terms of said order a rate of ten cents per hundred pounds, with thirty thousand pounds as a minimum carload, was

fixed on all lumber, logs and staves thereafter carried between stations in Louisiana on the line of your orator, the St. Louis, Iron Mountain & Southern Railway Company and the City of New Orleans.

Seventh. In the months of July, August, September and October of the year 1905, there were delivered by the Urania Lumber Company, L. M. Jones, Bradford Brothers, J. T. Adams and H. F. Bradford to your orator, the St. Louis, Iron Mountain & Southern Railway Company, at certain stations in Louisiana on its line of railway, to-wit, Olla, Georgetown and Kelly, Louisiana, a large number of oak staves and poplar logs consigned to Charles S. Elms and Hub Durselen, or to order—notify Charles S. Elms and Hub Durselen, at the City of New Orleans, Louisiana, and said logs and staves were loaded in the eighteen cars whose numbers and descriptions will appear from the document hereto annexed and marked "Exhibit B" of this bill. Said logs and staves so delivered to your orator, the St. Louis, Iron Mountain & Southern Railway Company, were delivered to it for carriage over its own connecting lines to New Orleans, and were at the time of such delivery, and at all times thereafter, intended and destined by the shippers and consignees to be exported to foreign countries from the port of New Orleans. Said logs and staves were accepted for carriage upon a rate of twelve cents per hundred pounds. Said rate of twelve cents per hundred pounds was, and is, the rate on logs, staves and other lumber destined for and put in course of exportation, or in course of interstate or export shipment prescribed in and obligatory on your orators, the Texas & Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company by the tariffs established, published and filed by your two said orators with the Interstate Commerce Commission, as required by law.

Eighth. Said logs and staves contained in the said described cars were transported by your orator, the St. Louis, Iron Mountain & Southern Railway Company, over its line to Alexandria, its point of connection with the line of your orator, the Texas & Pacific Railway Company, and was there delivered to and received by your orator, the Texas & Pacific Railway Company, and by it transported to the City of New Orleans. The arrival of said freight was, as is customary, notified to the said consignee, Charles S. Elms and Hub Durselen, and said consignees in turn notified your orator, the Texas & Pacific Railway Company, to deliver said logs and staves to certain steamship lines plying between New Orleans and European ports, and your orator, the Texas & Pacific Railway Company did deliver said freight to the steamship lines so designated, and the same was received by said steamship lines and loaded upon their steamships and thereafter exported from the State of Louisiana, as the said consignees and shippers had always known and intended that they should be; and said transportation from points of origin of said freight on the line of your orator, the St. Louis, Iron Mountain & Southern Railway Company, to points of destination in Europe was a continuous carriage of said freight, allowing only necessary time for trans-shipment at the port of New Orleans, and was

always intended by the shippers and consignees to be such. Before the delivery of said logs and staves to said steamship lines, your orator, the Texas & Pacific Railway Company, acting for your orator, the St. Louis, Iron Mountain & Southern Railway Company, and in its own interest and behalf, demanded and collected from the consignees freight on the said logs and staves at the said rate of twelve cents per hundred pounds, as it had a right to do.

78 Ninth. On the 10th day of October, 1905, Charles S. Elms filed with the said Railroad Commission of Louisiana a complaint, copy of which is hereto annexed and made part hereof as "Exhibit C." Said complainant claimed and pretended that the staves and logs transported in the cars described and numbered as aforesaid, and exported as aforesaid, were subject to the rate of ten cents per hundred pounds prescribed in the aforesaid order of said Railroad Commission, No. 445, and that the charge of twelve cents per hundred pounds demanded and collected by your orator, the St. Louis, Iron Mountain & Southern Railway Company, and your orator, the Texas & Pacific Railway Company, was in violation of said order and illegal, notwithstanding that said staves and logs were at all times destined for and constituted subjects of foreign commerce.

Tenth. Said Railroad Commission, upon a hearing of said complaint, and on the 10th day of November, 1905, sustained the same, and found and held that its said order No. 445 had been violated by your orators, the Texas & Pacific Railway Company and the St. Louis, Iron Mountain & Southern Railway Company, in collecting said charge of twelve cents per hundred pounds on the shipments above described; and thereupon sentenced your orators, the St. Louis, Iron Mountain & Southern Railway Company and the Texas & Pacific Railway Company, to each and severally pay to the State of Louisiana the sum of two thousand dollars as penalties; all of which will more fully appear from the copy of the order of said Railroad Commission, designated as No. 477, which is hereto annexed and made part hereof for greater certainty, and marked "Exhibit D."

Eleventh. On the 15th day of November, 1904, the said Railroad Commission of Louisiana, by its order No. 410, established and put into effect a rate of ten cents per hundred pounds on staves carried between all points on the line of your orator, the Kansas City Southern Railway and New Orleans, Louisiana, via the Louisiana Western Railway and Morgan's Louisiana & Texas Railroad & Steamship Company, as will more fully appear from a copy of the said order hereto annexed and made part hereof for greater certainty and marked "Exhibit E."

Twelfth. On December 21st, 1904, by its order No. 419, said Railroad Commission of Louisiana provided, amongst other things, as follows:

79 "7th. When there are two or more lines between any two points in Louisiana having through connections, the lowest rate established between such points shall be charged by the other lines accepting freight for transportation between said points. The rates from intermediate stations will not be affected by this ruling." Which said order is annexed and made part hereof as "Exhibit F."

The effect of the foregoing section of said order No. 419, as construed and applied by said Railroad Commission of Louisiana, was to put into effect a rate of ten cents per hundred pounds on lumber, staves and logs carried between all points on the lines of your orator, the Kansas City Southern Railway, and New Orleans, Louisiana, via the line of your orator, the Texas & Pacific Railway Company.

Thirteenth. In the month of March, 1905, Friedlaender & Oliven delivered to your orator, the Kansas City Southern Railway Company, at Leesville, a station in Louisiana on the line of its said railway, a large number of oak tank staves and oak headings consigned to George Gerdes at New Orleans, Louisiana. Said staves were loaded into three cars, designated as Texas & Pacific cars Nos. 7035, 6451 and 7036. Said commodities so delivered to your orator, the Kansas City Southern Railway Company, were delivered to it for carriage over its own and connecting lines to New Orleans, and were, at the time of such delivery and at all times thereafter, intended and destined by the shipper and the consignees to be exported to foreign countries from the port of New Orleans; and said transportation from points of origin of said freight on the line of your orator, the St. Louis, Iron Mountain & Southern Railway Company, to points of destination in Europe, was a continuous carriage of said freight, allowing only necessary time for trans-shipment at the port of New Orleans, and was always intended by the shippers and consignees to be such. The fact that said logs and staves were destined for export was well known to the agent of your orator, the said Kansas City Southern Railway Company at Leesville, aforesaid; and such fact was noted and indicated by said agent on the receipts and bills of lading furnished the said shipper, and a rate of fifteen cents per hundred pounds was stipulated to be paid for said carriage. Said rate of fifteen cents per hundred pounds was, and is, the rate on freight of the above described character destined for and being foreign and interstate commerce prescribed in the tariffs established, published and filed by your orators, the Kansas City Southern Railway Company and the Texas & Pacific Railway Company, with the Interstate Commerce Commission, as required by law.

Fourteenth. Said logs and staves contained in the said described cars were transported by your orator, the Kansas City Southern Railway, over its line to point of connection with the line of your orator, the Texas & Pacific Railway Company, at Shreveport, and were there delivered to and accepted by your orator, the Texas & Pacific Railway Company, and by it transported to the City of New Orleans. On arrival of said freight the customary notice was given to the consignees of arrival, and said consignees thereupon—to-wit, in the month of April, 1905,—notified your orator, the Texas & Pacific Railway Company, to deliver said freight to steamship West Point at your orator's terminal wharf at Westwego, said freight to be taken by said steamship West Point to Hamburg; and said freight was delivered to said steamship West Point, and was by said steamship taken out of the limits of the State of Louisiana to Hamburg or some other foreign port, as the said shippers and consignees had always intended that it should be. Before the delivery of said freight



your orator, the Texas & Pacific Railway Company, acting for your orator, said Kansas City Southern Railway Company, and in its own interest, demanded and collected from the consignees freight at the said rate of fifteen cents per hundred pounds, as it had a right to do.

Fifteenth. In the month of September, 1905, said George Gerdes filed with the said Railroad Commission of Louisiana an informal complaint. Said complainant claimed and pretended that the staves and headings contained and transported in the cars described and numbered as aforesaid and exported as aforesaid, were subject to the rate of ten cents per hundred pounds prescribed in the aforesaid orders of said commission Nos. 410 and 419, and that the charge of fifteen cents per hundred pounds demanded and collected by your orators, the Kansas City Southern Railway Company and the Texas & Pacific Railway Company, was in violation of said order and illegal, notwithstanding that said staves and headings were at all times destined for and were subjects of foreign commerce.

Sixteenth. Said Railroad Commission of Louisiana, upon a hearing of said complaint, and on the 10th day of November, 1905, sustained the same, and found and held that its orders Nos. 410 and 419 had been violated by your orators, the Kansas City Southern Railway Company and the Texas & Pacific Railway Company, in demanding and collecting the said charge of fifteen cents per hundred pounds on the shipments above described, and thereupon sentenced your said orators each and severally to forfeit and pay to the State of Louisiana the sum of two thousand dollars as a penalty, as will more fully appear from a copy of the order of said Railroad Commission, No. 476, hereto annexed and made part hereof as "Exhibit II" of this bill.

Seventeenth. Your orators aver that the said orders of the said Railroad Commission, Nos. 445, 419 and 410, as construed and applied by said commission in the matter of the shipments hereinbefore mentioned and set out, constitute a regulation of commerce with foreign nations, and of interstate commerce, and are in violation of clause 3 of section 8 of article 1 of the Constitution of the United States giving to Congress power to regulate commerce with foreign nations and among the several States; and of the statute passed by Congress in pursuance of such provision of the constitution which requires that the interstate rates duly filed with the Interstate Commerce Commission shall be charged on interstate and foreign shipments; and as so construed and applied by said Railroad Commission of Louisiana, are unconstitutional, null and void. That said Railroad Commission of Louisiana was without power or jurisdiction to prescribe the rate of freight to be charged by your orators on the aforesaid logs and staves, for as much as the same constituted and were at all times, from the inception of their carriage, objects of interstate and foreign commerce, and said Railroad Commission of Louisiana was without power or jurisdiction to impose on your orators penalties for not conforming to the said illegal rate prescribed by it; and by reason of said want of jurisdiction and authority said orders Nos. 476 and 477, dated respectively November 10th, 1905, imposing the aforementioned fines on your orators, are null and



void, and your orators are entitled to have them so decreed by this Honorable Court.

Eighteenth. Your orators further aver that the said Railroad Commission of Louisiana will attempt to enforce said orders Nos. 410, 419 and 445, and will endeavor to collect from your orators penalties in respect of many other interstate and foreign shipments similar to, and carried under similar conditions and circumstances to the shipments concerning which allegations are herein made, upon which said shipments your orators have demanded and collected the interstate rate in the tariffs established, published and filed by them with the Interstate Commerce Commission; and said Railroad Commission of Louisiana will attempt to enforce said orders and to collect penalties from your orators in respect of many other interstate and foreign shipments similar in character to the shipments hereinbefore described, and which may and will be hereafter carried by your orators; and such course on the part of said commission will lead to a multiplicity of suits and will inflict irreparable damage on your orators. That an injunction in this cause is necessary to restrain and prohibit said Railroad Commission of Louisiana from attempting in any way to enforce said orders Nos. 476 and 477, or to collect the fines imposed under said orders, and to further restrain and prohibit it from enforcing said orders Nos. 410, 419 and 445 in respect of past and future shipments of foreign and interstate freight of like kind with the shipments herein described, which have been since the imposition of said fine, and may be hereafter tendered to your orators for transportation, or actually transported by your orators, under circumstances and conditions similar to the circumstances and conditions hereinabove averred and set forth; and that your orators have a decree, according to the practice and rules of this Court, declaring said orders Nos. 476 and 477 to be null and void.

Nineteenth. Your orators aver, further, that they have common a [a common] interest in contesting the validity of said orders Nos. 445, 419 and 410, as construed and applied, and attempted to be enforced, by said Railroad Commission of Louisiana, for as much as said orders so construed and applied affect the joint rates now established, charged and collected by your orators on lumber, logs and staves destined for export and shipped at various points in Louisiana on your orators' several lines, taking and to which apply the aforesaid rates established, published and filed by your orators with the said Interstate Commerce Commission; and for as much as the said orders, if enforced according to the construction of said Railroad Commission of Louisiana, will diminish by twenty per cent. the revenue of your orators from the carriage of such staves, lumber and logs, and the loss so caused to each of your orators in such diminution of freight will exceed the sum of five thousand dollars per annum.

Twentieth. That this cause is one of a civil nature, and arises under the constitution and laws of the United States, and the amount in controversy herein, as to and in respect of each one of your orators, exceeds the sum and value of five thousand dollars, exclusive of interest and costs.

In consideration whereof and for as much as your orators are remediless in the premises at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable, your orators pray that it may be decreed herein that a writ of injunction issue out of and under the seal of this Honorable Court, to be directed to the said Railroad Commission of Louisiana, through its proper officer, restraining and prohibiting it from and after the time when it shall have knowledge of the entry of the restraining order and the existence of the injunction herein prayed for, from in any wise attempting to enforce its said orders of date November 10th, 1905, and designated as orders Nos. 476 and 477; and from in any wise attempting to collect, and from directing the collection of the penalties imposed on your orators by said orders; and further restraining and prohibiting it from imposing, or attempting to impose upon, and from collecting, or attempting to collect from your orators any other or further penalties for non-observance of its said orders Nos. 445, 419 and 410, in respect of and in connection with shipments of logs, staves and lumber destined for, and being subjects of interstate and foreign commerce, which have, since the promulgation of said orders, Nos. 445, 419 and 410, and since the promulgation of said orders Nos. 476 and 477, been carried by your orators, or which may hereafter be carried by them, severally or jointly, from Olla, Georgetown, Kelly or Leesville, Louisiana, or from any other points of shipment in Louisiana, taking, or to which apply the rate established, published and filed with the Interstate Commerce Commission by your orators; and that in the meantime, and until the hearing thereof, your orators may have a temporary restraining order embracing the relief herein prayed for, and to be binding on said Railroad Commission of Louisiana from and after the time when it shall have knowledge of the entry thereof; and that on the final hearing of this cause it may be decreed that the said orders Nos. 445, 419 and

84 410, as construed and applied by the said Railroad Commission of Louisiana, constitute an illegal regulation of interstate and foreign commerce, and by reason thereof are null and void; and that the said Railroad Commission of Louisiana was without power or authority in the premises to impose the fines herein complained of upon your orators, and that its said orders Nos. 476 and 477, dated November 10th, 1905, by reason of such want of power and jurisdiction, were and are null and void; and that on the final hearing of this cause it may have all the injunctions herein prayed for made perpetual; and that your orators may have such further and other relief in the premises as the nature and the circumstances of the case may require.

May it please your honors to grant unto your orators a writ or writs of subpoena, directed to the Railroad Commission of Louisiana, through its proper officer, directing it at a certain date, under a certain penalty therein to be provided, personally to appear before this Honorable Court, and then and there full, true, direct and perfect answer make to this bill of complaint (but not under oath, answer under oath being hereby waived), and further stand to, perform and

abide such orders, directions and decrees herein as to your Honors may seem fit.

And your orators will ever pray.

|          |  |
|----------|--|
|          | THE TEXAS & PACIFIC RAIL-<br>WAY COMPANY,                    |
| (Signed) | By HOWE, SPENCER & COCKE,<br><i>Its Solicitors.</i>          |
|          | ST. LOUIS, IRON MOUNTAIN &<br>SOUTHERN RAILWAY COM-<br>PANY, |
| (Signed) | By HUDSON, POTTS & BERNSTEIN,<br><i>Its Solicitors.</i>      |
|          | KANSAS CITY SOUTHERN RAIL-<br>WAY COMPANY,                   |
| (Signed) | By ALEXANDER & WILKINSON,<br><i>Its Solicitors.</i>          |

STATE OF LOUISIANA,  
*Parish of Orleans, ss:*

W. F. Braggins, being duly sworn, deposes and says: That he is division freight agent of the Texas & Pacific Railway Company, one of the complainants above named, in the City of New Orleans, and as such is an agent of said complainant, and is author-  
85 ized on its behalf to make this affidavit; and that he is author-  
ized by the co-complainants of said company, above named, to make this affidavit on their behalf. That he has read the foregoing bill of complaint and knows the contents thereof; and that the same is true, except as to matters stated to be on information and belief, and as to those he believes it to be true.

(Signed)

W. F. BRAGGINS.

Sworn to and subscribed before me this 4 day of December, A. D. 1905.

[SEAL.] (Signed)

CHAS. D. DANECIAUD,  
*Notary Public.*

EXHIBIT "A" ATTACHED TO BILL OF COMPLAINT.

Filed Dec. 4, 1905.

[In Circle:] Div. Freight Agt. Received Oct. 16, 1905. New Orleans. The T. & P. Ry. Co.

Railroad Commission of Louisiana.

Order No. 445.

(Cancelling Order No. 440.)

No. 522.

HUB. DURSELEN

vs.

LOUISIANA & ARKANSAS RAILROAD COMPANY, LOUISIANA & NORTH-west Railroad Company, St. Louis, Iron Mountain & Southern Railway Company, Louisiana Railway & Navigation Company, Texas & Pacific Railway Company, Morgan's Louisiana & Texas Railroad and Steamship Company.

*Rates on Lumber, Logs and Staves.*

Heard March 21, 1905.  
Decided April 18, 1905.  
Rehearing May 23, 1905.

86 The commission having under consideration the evidence submitted in this case on a rehearing granted at Baton Rouge May 23, 1905, it is ordered:

That the rates established in the said Order No. 440 be and are hereby cancelled, and the following rates are established on:

Lumber, Logs and Staves, and Articles Taking Same Rates under Western Classification No. 38, When Transported Between Points in the State of Louisiana:

| To          | From   | Rate—carload.                          |
|-------------|--|--|
|             |  | Minimum 30,000 lbs.<br>Per 100 pounds. |
| New Orleans | Stations on Louisiana and Arkansas Railroad.....                 | .14                                    |
|             | Stations on Louisiana and North-west Railroad.....               | .14                                    |
|             | Stations on St. Louis, Iron Mountain and Southern Rail-way ..... | .10                                    |
|             | Stations on the Louisiana Railway and Navigation Com-pany .....  | .13                                    |
|             |  |  |

All rates in conflict with this order are hereby cancelled.

By order of the Commission,

Baton Rouge, Louisiana, May 25, 1905.

C. L. DE FUENTES, *Chairman*;

W. L. FOSTER,

OVERTON CADE,

*Commissioners.*

W. M. BARROW, *Secretary.*

[SEAL.]

EXHIBIT "B" ATTACHED TO BILL.

Filed Dec. 4, 1905.

| Description of car. | Date of shipment.     |
|---------------------|-----------------------|
| M. P. 27937.....    | September 30th, 1905. |
| M. P. 26721.....    | September 30th, 1905. |
| M. P. 25950.....    | September 30th, 1905. |
| M. P. 33479.....    | October 3rd, 1905.    |

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|                     |                    |
|---------------------|--------------------|
| I. M. S. 9877.....  | October 3rd, 1905. |
| T. & P. 6966.....   | October 4th, 1905. |
| C. P. 84852.....    | October 4th, 1905. |
| S. P. 66068.....    | October 4th, 1905. |
| T. & P. 5560.....   | October 5th, 1905. |
| S. P. 38323.....    | July 7th, 1905.    |
| I. M. S. 12070..... | July 7th, 1905.    |
| M. P. 526.....      | August 3rd, 1905.  |
| I. M. S. 10749..... | July 20th, 1905.   |
| M. P. 23167.....    | July 25th, 1905.   |
| M. P. 23081.....    | July 25th, 1905.   |
| I. M. 2029.....     | July 20th, 1905.   |
| M. P. 11575.....    | July 8th, 1905.    |
| I. M. 14024.....    | July 8th, 1905.    |

EXHIBIT "C" ATTACHED TO BILL.

Filed Dec. 4th, 1905.

Charles S. Elms, Exporter.

Pitch Pine, Kiln Dried Saps, Hardwood Lumbars, Logs and Timbers.  
1021 Hennen Building.

NEW ORLEANS, LA., U. S., 10/13/05.

Hon. Railroad Commission, Baton Rouge, La.

GENTLEMEN: Availing myself of rules and regulations as revised Jan. 1st, 1905, I respectfully beg to say that the St. Louis, Iron Mountain and Southern and the T. P. R. R. Co.'s acting jointly, have charged and collected from me on I. M. car 14024, S. P. car 38,323, I. M. car 12,070, Mo. Pac. car 11,575, Mo. Pac. car 23,167,

Mo. Pac. — 23,081, I. M. car 2,029, Mo. Pac. car 526, I. M. car 10749, loaded with oak staves and poplar logs shipped from Olla, and Georgetown, La., respectfully on the I. M. R. R. to New Orleans, at 12c per hundred pounds in lieu of 10c per hundred pounds, as established by the Honorable Railroad Commission.

|    |  |          |
|----|--|----------|
| 88 | These 9 cars aggregate 347,999 lbs., at 12c per hundred lbs..... | \$417.49 |
|    | 347,999 lbs., at 10c per hundred lbs.....                        | 347.90   |
|    | Over charge .....  | \$69.59  |

I respectfully beg to ask that you instruct the Railroad Co. to make us prompt payment on this amount, with interest from date of payments.

We beg to attach hereto 6 original expense bills and 3 duplicate copies, the original having been lost or mislaid covering shipment of the above mentioned cars.

Charles S. Elms, Exporter.

Pitch Pine, Kiln Dried Saps, Hardwood Lumber, Logs and Timbers.  
1021 Hennen Building.

NEW ORLEANS, LA., U. S. A., 10/13/05.

Hon. R. R. Commission:

—2—

I beg to attach hereto paid expense bills on: Mo. Pac. 27,937, Mo. Pac. 26,721, Mo. Pac. 29,559, Mo. Pac. 23,479, I. M. & S. 8,977, T. P. 5,560, T. P. 6,966, S. P. 66,068, C. R. 84,852, T. P. 11,350, M. L. & T. 39,437, T. P. 11,295, loaded with staves at Georgetown, Olla and Kelly, La., and shipped to New Orleans. The aggregate weight of these cars is 526,100 pounds at 12c per hundred pounds—\$633.36 instead of 10c per hundred pounds as established by the Hon. Railroad Commission, and this shows an overcharge of \$107.22 and we respectfully ask that you have the railroad refund us this overcharge, with interest from date of payments.

We attach hereto original paid expense bills. All these ship-New Orleans, La., and were intra-state shipments and the commission's rate should apply.

The above charge of 12c per hundred pounds on staves and logs as herein shown is a violation of the commission's established rate.

I am mailing carbon copy of this letter by registered mail  
89 to W. F. Braggins of the T. P. and L. W. Anderson of the Iron Mountain R. Co.

Yours very truly,  
(Signed)

CHARLES S. ELMS.

EXHIBIT "D" ATTACHED TO BILL.

Filed Dec. 4, 1905.

Railroad Commission of Louisiana.

Order No. 477.

No. 578.

RAILROAD COMMISSION OF LOUISIANA

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY,  
Texas and Pacific Railway Company.

*Violation of Rates Established by the Commission. Heard November 9th, 1905.*

After notice to and hearing of defendant companies in this case, and after due consideration of the record, the Commission finds that its Order No. 445, adopted May 25, 1905, fixing among other rates, a rate of ten cents per hundred pounds for the transportation of staves in carloads, from points on the St. Louis, Iron Mountain and Southern Railway, via its connections, to New Orleans, has been wilfully and repeatedly violated by the said St. Louis Iron Mountain and Southern Railway Company, acting jointly in the transportation of staves to New Orleans, and it is therefore,

Ordered, that, in accordance with the provisions of Article 286 of the Constitution of Louisiana, the said St. Louis Iron Mountain and Southern Railway Company and the Texas and Pacific Railway Company shall each and severally pay to the State, on or before November 20, 1905, the sum of two thousand (\$2,000.00) dollars, for the said violation of the Commission's orders and rates.

By order of the Commission,

Baton Rouge, Louisiana, November 10, 1905.

C. L. DE FUENTES, *Chairman*;  
W. L. FOSTER,  
OVERTON CADE,

*Commissioners.*  
W. M. BARROW, *Secretary.*

[SEAL.]

Filed Dec. 4, 1905.

Railroad Commission of Louisiana, Baton Rouge.

Order No. 410.

No. 488.

THE KERN COMPANY et al.

VS.

KANSAS CITY SOUTHERN RAILWAY COMPANY, LOUISIANA WESTERN  
Railway Company et al.

Complaint was filed with the Commission on October 24th, 1904, against the rates on staves from points on the Kansas City Southern Railway to New Orleans.

Hearing November 15, 1904, at Baton Rouge, Louisiana. After due consideration of this case it is,

Ordered, that the rate on staves, carloads, and articles taking the same rates under the Western Classification No. 37, between all points on the Kansas City Southern Railway and New Orleans, Louisiana, in Louisiana, via the Louisiana Western Railway and the Morgan's Louisiana & Texas Railroad and Steamship Company, shall be ten cents per one hundred pounds, straight or mixed, minimum weight thirty thousand pounds per car.

All rates now in effect in conflict with this order are hereby canceled.

By order of the Commission.

Baton Rouge Louisiana, November 15th, 1904.

C. L. DE FUENTES, *Chairman*;

W. L. FOSTER,

OVERTON CADE,

*Commissioners.*

[SEAL.]

W. M. BARROW, *Secretary.*

Filed Dec. 4, 1905.

Railroad Commission of Louisiana, Baton Rouge.

Order No. 419.

*Joint Through Rates.*

At a general session of the Railroad Commission of Louisiana, held at Baton Rouge, Louisiana, December 21st, 1904, after due notice to and hearing of all parties interested, the following rules relating to Joint Through Rates were adopted:



1. Joint Through Rates are those authorized, or ordered put in, by the Railroad Commission of Louisiana, which shall apply on shipments moving between two points in the State of Louisiana, over two or more rail or water lines or routes, not under the same management or control.

*Established Rates.*

2. To establish joint through rates, carriers must obtain the authority for the rates proposed by them from the Railroad Commission of Louisiana.

3. No joint through rates will be considered established by the carriers parties thereto which shall not first have been submitted to the Railroad Commission for their approval, and the Commission's authority therefor shall have been issued and printed on the tariffs.

4. When no joint through rates have been established as above provided, the Commission will, upon request of any interested party, establish and order put in, such reasonable joint through rates as they may consider necessary after hearing of parties interested.

*Rates to be Applied Where no Rates Have Been Established.*

5. When no joint through rates have been established between points in Louisiana, by being authorized by the Commission, or ordered put in, then in no case shall the joint through rates exceed the sums of the lowest mileage rates apply on each line over which shipment moves, less ten per cent.

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*Approval of Tariffs.*

6. All Joint Through Tariffs in use December 1st, 1904, which have not been authorized by the Commission since July 25th, 1904, (except those which are in contest before the Commission, or rates about which complaint has been made), are hereby approved by the Commission, subject to the same rules and regulations as apply to single rates, and copies of all such tariffs must be submitted to the Commission at once for authority number and filing.

*Rates from Competing Points.*

7. When there are two or more lines between any two points in Louisiana, having through connections, the lowest rate established between such points shall be charged by the other lines accepting freight for transportation between said points. Rates from intermediate stations will not be affected by this ruling.

*Minimum Charges.*

8. Actual weights must be charged for in all cases except that the minimum charge to be collected on single shipments over two lines shall be forty cents, and over three or more lines sixty cents.

By order of the Commission.

Baton Rouge, Louisiana, December 21st, 1904.

C. L. DE FUENTES, *Chairman;*

W. L. FOSTER,

OVERTON CADE,

*Commissioners.*

W. M. BARROW, *Secretary.*

[SEAL.]

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EXHIBIT "II" ATTACHED TO BILL.

Filed Dec. 4, 1905.

Railroad Commission of Louisiana.

Order No. 476.

RAILROAD COMMISSION OF LOUISIANA

VS.

KANSAS CITY SOUTHERN RAILWAY COMPANY, TEXAS AND PACIFIC  
RAILWAY COMPANY.

*Violation of Rates Established by the Commission. Heard November 8, 1905.*

After notice to and hearing of the defendant companies in this case, and after due consideration of the record, the Commission finds that its Order No. 410, adopted November 15, 1904, and reaffirmed by its Order 415 adopted December 21st, 1904, fixing a rate of ten cents per hundred pounds on staves in carload lots, from points on the Kansas City Southern Railway to New Orleans, has been wilfully and repeatedly violated by both the Kansas City Southern Railway Company, and the Texas and Pacific Railway Company, in that they have charged, demanded and collected a rate higher than the rate fixed by the Commission in its said Order No. 410 on shipments of staves consigned to New Orleans on local bills of lading. It is therefore,

Ordered, that, in accordance with the provisions of Article 286 of the Constitution of Louisiana, the Kansas City Southern Railway Company and the Texas and Pacific Railway Company shall each and severally forfeit and pay to the State, on or before November 20, 1905, the sum of two thousand (\$2,000.00) dollars, for the said violation of the Commission's orders and rates.

By order of the Commission.

Baton Rouge, Louisiana, November 10, 1905.

C. L. DE FUENTES, *Chairman;*

W. L. FOSTER,

OVERTON CADE,

*Commissioners.*

W. M. BARROW, *Secretary.*

[SEAL.]

\* \* \* \* \*

*Appearance of Defendants.*

Extract from the Chancery Order Book.

January 1, 1906.

THE TEXAS & PACIFIC RAILWAY CO. & al.

vs.

RAILROAD COMMISSION OF LOUISIANA.

Now comes Walter Guion, Attorney General of Louisiana, and enters his appearance for the Railroad Commission of Louisiana, defendant herein.

*Amended and Supplemental Bill.*

Filed December 5, 1905.

United States Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

versus

THE RAILROAD COMMISSION OF LOUISIANA, &c.

The complainants herein, with leave of Court, bring this their amended and supplemental bill against the defendants heretofore named in the original bill, and also against Walter Guion, a citizen and resident of the State of Louisiana, and City of New Orleans, and who is Attorney General of the State of Louisiana; and thereupon your orators further complain and say:

First. That your orators have heretofore, on the fourth day of December, 1905, exhibited and filed their bill of complaint herein against the Railroad Commission of Louisiana, and they reiterate each and every allegation in said bill contained.

Second. They aver that after the filing of said bill, the said Walter Guion, who is Attorney General of the State of Louisiana, has asserted a right and intention on his part to bring suits in the

95 State Court against your orators for the collection of the fines mentioned and set forth in the bill of complaint in this cause; and your orators aver that he will do so, unless restrained by orders of injunction in this cause. Your orators aver that such action on the part of said Walter Guion, if permitted, would result in a multiplicity of suits and costs, and would be an illegal interference with the jurisdiction of this Court, which has been duly seized with jurisdiction to hear and determine the questions and controversies set forth in this case; and that your orators have a right to make said Guion a party to this cause, and to have the same injunc-

tion orders and decrees against him as against the other defendants in this cause.

To the end, therefore, that your orators may have such other and further relief as should be granted by equity in the premises, and that said Walter Guion, may be made a party of this cause, and that the same restraining orders of injunction and decrees may be rendered against him as against the said Railroad Commission of Louisiana, and that he be restrained and prohibited from attempting to enforce the orders of said Commission detailed in the original bill herein, and from attempting to sue for or collect the fines and penalties imposed by said orders, and that such other and further decrees may be made herein as have been heretofore prayed for, and as may be just;

May it please your Honors to grant unto your orators writs of subpoena directed to said Walter Guion, as well as to said Railroad Commission of Louisiana, through its proper officer, directing them and each of them, at a certain date and under a certain penalty, to personally appear before this Honorable Court, and then and there full, true, direct and perfect answer make to the bill of complaint and to this amended and supplemental bill, *bill* not under oath, an answer under oath being hereby waived), and further stand to, perform and abide such orders, directions and decrees herein as to your Honors may seem fit.

(Signed)

HOWE, SPENCER & COCKE, *Sol'rs.*

U. S. OF AMERICA, *ss:*

W. F. Braggins sworn says that he — the agent of the complainants in this cause in New Orleans, and that the foregoing bill of complaint is true of his own knowledge except as to matters therein stated on information and belief and as to those matters he believes it to be true.

(Signed)

W. F. BRAGGINS.

96 Sworn to and subscribed before me this 5th day of December, 1905.

(Signed)

H. J. CARTER,  
*United States Commissioner.*

*Order.*

Filed December 5, 1905.

U. S. Circuit Court, Baton Rouge Div.

No. 55.

T. & P. RAILWAY Co. et al.

vs.

RAILROAD COMMISSION OF LOUISIANA, &c.

On motion of Howe, Spencer & Cocke for complainants, and on the facts stated in the bill and amended bill which amended bill

is allowed to be filed, it is ordered that the defendants in said bill and amended bill show cause on Saturday, January 6, 1906, at 11 A. M., before the Court in New Orleans, why an injunction pendente lite should not issue herein as prayed for in said bill and amended bill or why such other and further order should not be made as may be just.

December 5, 1905.

(Signed)

CHARLES PARLANGE,  
U. S. Judge.

\* \* \* \* \*

*Demurrer.*

Filed Jan'y 6, 1906.

In the Honorable United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division.

No. 55. In Equity.

THE TEXAS & PACIFIC RAILWAY Co. et al.

vs.

RAILROAD COMMISSION OF LOUISIANA et al.

97 These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said complainants' bill of complaint to be true, in such manner and form as the same are therein set forth and alleged, doth demur thereto and, for cause of demurrer, sheweth that the said plaintiffs have not in and by the said bill and the amended and supplemental bill made or stated any such cause as doth or ought to entitle them or either of them to any such discovery or relief as is thereby sought and prayed for, from or against these defendants or either of them.

2. These defendants demur further to said complaint and amended and supplemental complaint on the further ground, and for the further and additional reason and cause of demurrer aver and show, that it appears from the bill of complaint and from the amended and supplemental bill of complaint filed herein by plaintiffs and the demand therein contained, that this suit is one against the State of Louisiana and is brought to restrain the State of Louisiana, in her sovereign character and capacity, from instituting suits to recover and enforce the collection of penalties imposed under and by virtue of the provisions of her Constitution of a penal nature, which cannot be brought against said State in this Honorable Court, and that this Honorable Court has, for said reasons, no jurisdiction to hear and determine this action.

3. That it is shown in said bill of complaint and in said amended and supplemental bill of complaint that this Honorable Court is without jurisdiction and cannot entertain jurisdiction of this suit, because the amount involved and the matter in dispute is not sufficient to give this Honorable Court jurisdiction, the same not exceed.

ing the sum of two thousand dollars, exclusive of interests and costs as the interests of each complainant in said suit is separate, several and distinct, and does not exceed in amount the sum of two thousand dollars exclusive of interests and costs.

4. That plaintiffs have not, in said bill of complaint shown any right, power or authority in defendants, or either of them, to stand in judgment herein, or any right, title or interest whatever in these defendants or either of them, which defendants or either of them ought to be compelled to defend.

5. That should this Honorable Court hold that it has, and will maintain jurisdiction of this suit the bill of complaint and  
98 the amended and supplemental bill of complaint are both wholly without equity, as it appears upon the face of the bill and the amended and supplemental bill that plaintiffs have a plain, adequate and complete remedy at law.

Wherefore these defendants demand the judgment of this Honorable Court whether they shall be compelled to make any further answer to the said bill or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed)

WALTER GUION,  
*Attorney General of Louisiana,  
Solicitor for Defendants.*

C. L. Defuentes, being duly sworn deposes and says that he is the chairman of the Railroad Commission of Louisiana, one of the above named defendants, with power and authority to make this affidavit, and Walter Guion being duly sworn deposes and says that he, in his capacity of Attorney General of Louisiana is one of the above named defendants, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

(Signed)

C. L. DE FUENTES,  
WALTER GUION.

Subscribed and sworn before me this 6th day of January, 1906.

[SEAL.]

(Signed)

ALEXIS BRIAN,

*Not. Pub.*

I hereby certify that, in my opinion, the foregoing demurrer is well founded in point of law.

(Signed)

WALTER GUION,  
*Attorney General, Solicitor for Defendants.*

*Complainants' Affidavits.*

Affidavit of George Simpson.

Filed January 6, 1906.

In the United States Circuit Court, Fifth Circuit, Eastern District of Louisiana, Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.  
versus

THE RAILROAD COMMISSION OF LOUISIANA.

STATE OF LOUISIANA,

*City of New Orleans, ss:*

Before me, the undersigned authority, personally came and appeared George Simpson, who being duly sworn deposes and says that he is the freight agent of the Texas & Pacific Railway Company, and has been such for the last three years, and that his jurisdiction extends over the City and port of New Orleans, and it is a part of his duty to receive and deliver freight destined over or transported by the Texas & Pacific Railway Company. That he is familiar with the custom and method of handling staves, logs and other forest material intended for export; that he knows the firm of Hub Durselen and Charles S. Elms and George Gerdes; that said Durselen and Elms are exporters of forest products, and have an office in the City of New Orleans. That George Gerdes is a freight broker and forwarding agent.

That the method in handling the business in which said parties are engaged is as follows: The exporter purchases, at various points in the State of Louisiana and adjacent States, logs, staves and other forest products to fill orders which he has obtained in foreign countries. These products are then shipped to him in New Orleans, usually on local bills of lading, at times having on them the notation "For Export," and on the arrival of these cars at this port the railway company notifies the exporter of that fact. If he is ready to export the shipment, he notifies the railway company the name of the steamship to which he desires the cars delivered, and pays the railway company its freight and charges. If, however, the selling order from the customer is of such a character that it is necessary to accumulate a large amount of such products or if the vessel by which same are to be shipped to such foreign country be not ready to receive delivery thereof, he permits the products to remain in the cars in possession of the railway company until such time as he has accumulated the entire order, or until the ship is ready to receive the same; but it is not customary for the exporter to accept delivery and take possession of the cars.

In reference to the cars and shipments mentioned in the bill of complaint, none of same were ever delivered to, or came into the possession of the shippers or consignees in the City of New Orleans; on the contrary these shipments from the time they left their points of origin, until they arrived in the final destination in foreign countries, were never out of the possession and custody of the carriers; and said shipments were continuous and through shipments from the points of origin to the points of final destination in foreign countries, and their stoppage in New Orleans, was only temporary, and merely for the convenience of the exporter in the handling of his business, either in the completion of his orders, or in the accumulation of a sufficient amount of these products to enable him to obtain a favorable ocean rate. All of the shipments mentioned in the bill of complaint were intended for export, and were actually exported, being delivered by the Texas & Pacific Railway Company at the request of the consignees in New Orleans to steamship companies for delivery in various ports of Europe.

(Signed)

GEO. SIMPSON.

Sworn to and subscribed before me this 6th day of January, 1906.

(Signed)

H. J. CARTER,

U. S. Comm'r.

*Affidavit of William F. Braggins.*

Filed January 6, 1906.

In the United States Circuit Court, Fifth Circuit, Eastern District of Louisiana, Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

versus

THE RAILROAD COMMISSION OF LOUISIANA.

STATE OF LOUISIANA,

*City of New Orleans, ss:*

101 Before me, the undersigned authority, personally came and appeared William F. Braggins, who, being duly sworn, deposes and says that he is the Division Freight Agent of the Texas & Pacific Railway Company, and has been such for the last seven years, and that his jurisdiction extends over the State of Louisiana. That in the performance of his duties as such division freight agent he has become acquainted and familiar with the method of handling staves, logs and other forest products by persons engaged in the business of exporting same to foreign countries. That the method of handling such business is as follows: The exporter, if he has his office in the City of New Orleans, buys from parties in various parts of the State of Louisiana and adjoining States staves, logs and other forest products, to fill orders obtained by



him in foreign countries. These products are then shipped by him to New Orleans, and on their arrival at the port he is notified of that fact by the railway company. If he is ready to export the shipment he notifies the railway company of the steamship to whom he desires same to be delivered, and pays the railway company its freight and charges. If, however, the selling order from the foreign customer is of such a character that it is necessary to accumulate a large amount of such products, or if the vessel by which same are to be shipped to such foreign country be not ready to receive delivery thereof, he permits the products to remain in the cars, or on the railway company's wharf in the possession of the railway company, until such time as he has accumulated the entire order, or until the ship is ready to receive same. It is not customary, nor does the exporter accept delivery of the cars from the railway company, until he orders the delivery of the cars to the steamship company, and delivery is only made by the railway company to the steamship company, and not to the shipper; so that, from the time the shipment is made in the interior, until the arrival of the products in the foreign port, the exporter never has custody or possession of said products, but the same is and remains in the custody of the carriers.

Where the exporter has his office or place of business at some other place than the City of New Orleans, it is customary for him to consign such shipments to some ship agent or freight broker in the City of New Orleans, who attends to the giving of directions to the railway company for deliveries to the ships. Frequently such shipments are consigned to deponent who handles them as above described.

In reference to the particular shipments mentioned in the bill of complaint in this cause, the products shipped were  
102 never in the possession of Mr. Durselin or Mr. Elms. The cars containing these products arrived at various times in the City of New Orleans, but were never taken possession of by either of said parties; on the contrary, they remained in the possession of the Texas & Pacific Railway Company until said company was directed by said Elms and said Durselin to deliver same to steamships destined for foreign ports; and the Texas & Pacific Railway Company, acting upon such directions, did deliver all of the cars mentioned in the bill of complaint to the steamship companies, receiving from the steamship companies mates' receipts, which mates' receipts were afterwards delivered to said Elms or said Durselin; so that from the time the said shipments left the point of origin until they arrived at their destination, in the foreign country, same were at all times in the possession and control and at the risk of some carrier; and the shipment, from the time same left the point of origin, until arrival in the foreign country, was a continuous shipment, and the delay at New Orleans was only a temporary stoppage in the transit, and not a permanent one.

Deponent further says that he is informed and believes that the business conducted by George Gerdes is that of freight broker and forwarding agent, and that such was his relation to the shipments made by Friedlander and Oliver described in the bill of complaint.

That said shipments made by Friedlander & Oliver were intended and destined for export to foreign countries, and that same were shipped to said Gerdes merely for the purpose of having said Gerdes secure further shipment thereof by the steamship company. That said Gerdes never came into the possession of the said cars so consigned to him, but same remained in the possession and control of the Railway Company until same was delivered by it to the steamships or steamship lines designated by the said Gerdes; so that said shipments were, from the point of origin to their destination in said foreign country, continuous and through shipments, and never were intended otherwise.

(Signed)

WM. F. BRAGGINS.

Sworn to and subscribed before me, this sixth day of January, 1906.

(Signed)  
[SEAL.]

CHAS. I. DENECHAUD,  
Not. Pub.

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*Affidavit of John D. Wilkinson.*

Filed January 6, 1906.

In the United States Circuit Court, Fifth Circuit, Eastern District of Louisiana, Baton Rouge Division.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

versus

THE RAILROAD COMMISSION OF LOUISIANA.

STATE OF LOUISIANA,

*City of New Orleans, ss:*

Before me, the undersigned authority, personally came and appeared John D. Wilkinson, who, being duly sworn, deposes and says that he is one of the attorneys in the State of Louisiana for the Kansas City Southern Railway Company, one of the complainants herein, and has been such for the last six years. That in the performance of his duties as attorney for said Railway Company, he attended the meeting of the Railroad Commission at which the fine was imposed which is herein contested, and was present at said hearing and heard all of the testimony adduced at the trial of said complaint. That on the trial of said complaint before said Railroad Commission, it was shown, and affiant believes it to be true, that the particular shipment in question, originating on the Kansas City Southern Railway Company at Leesville, in the State of Louisiana, was intended as an export shipment. That the bill of lading which was issued by the Kansas City Southern Railway Company had marked on it "For Export," and the local agent of the said Kansas City Southern Railway Company stated, and affiant believes it to be true, that the representatives of said shippers at and near Leesville, Louisiana, stated to said local agent that said shipment was intended

for export, and not for local consumption in the City of New Orleans. That said agent further stated to the local representatives of said shippers that if they would make a statement declaring that said shipment was for local use, or for sale in the City of New Orleans, that he would allow them the local rate on staves; but the said local representative of said shippers declined to make said statement, and declared that said shipment was intended for export, and thereupon the said local agent of the said Kansas City Southern Railway Company demanded of the shippers the export rate charged in this matter.

104 That the only protest made by said shippers, as stated by the said local agent of said Railway Company, and which affiant believes to be true, was against the charge of the export rate on said shipment, and there was no protest made to the notation on said bill of lading, hereinabove referred to, that said shipment was for export.

That at the said hearing before said Railroad Commission, it was further shown that the said shippers received on said shipment so originating on the said Kansas City Southern Railway Company, fifteen days free time in the City of New Orleans; whereas, the rules and regulations of said Commission and of the railways entering said City of New Orleans only allowed them forty-eight hours on a local shipment and twenty days on a shipment made for export, the said shippers claiming that they accepted said free time because no demurrage was demanded of them therefor.

(Signed)

JOHN D. WILKINSON.

Sworn to and subscribed before me this 6th day of January, 1906.

(Signed)

E. M. FULLAR,

*Deputy Clerk.*

#### DEFENDANTS' AFFIDAVITS.

*Affidavit of William J. Dardis and Joseph Dardis.*

Filed Jan. 6, 1906.

U. S. Circuit Court, 5th Circuit, Eastern District of Louisiana, Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY CO. et al.

vs.

RAILROAD COMMISSION OF LOUISIANA.

Before me, the undersigned authority, personally came and appeared William J. Dardis and Joseph Dardis, who, on being duly sworn, depose and say that affiant, William J. Dardis, is a clerk, and affiant Joseph Dardis is the chief clerk of George Gerdes, in the City of New Orleans, and were such previous to and on the 11th March,

1905, and have been continuously since, and that in their said capacities, they had entire charge of and control over the receiving and forwarding of the three shipments of staves and headings  
105 hereinafter referred to.

Affiants depose and say that on the 11th March, 1905, there were delivered to the Kansas City Southern Railway at Leesville, in the State of Louisiana, by Friedlander and Oliven, three carload shipments of staves and headings contained in three cars of the Texas and Pacific Railway Company, Nos. 6450, 7426 and 7035, consigned to said George Gerdes at the City of New Orleans, Louisiana, and that the same were so delivered at Leesville for carriage to said City of New Orleans by said Kansas City Southern Railway Company by means of the Texas and Pacific Railway Company, as a connecting carrier, which latter company delivered the same at New Orleans, to George Gerdes, affiants acting at the time in the delivery of same as the representatives of said George Gerdes, the consignee; and affiants declare that on their receiving said staves and heading- from said Texas and Pacific Railway Company for account of said George Gerdes at New Orleans, and paying to that company the charges for the transportation of same from Leesville to New Orleans, demanded of said George Gerdes by that company, said company delivered said staves and heading- to said George Gerdes at New Orleans, represented at that time in that transaction by affiants.

Affiants declare that none of said shipments were made to said George Gerdes at New Orleans on a through bill of lading to any foreign port, and although, after receiving the said staves and heading- from the said Texas & Pacific Railway Company, affiants kept the same together, for account of said George Gerdes, until such time as there could be collected at New Orleans a sufficient quantity and number of such staves and heading- for foreign shipment and export, and did, when a cargo of same had been accumulated, ship said staves and heading- from the port of New Orleans to a foreign country, nevertheless the said shipments from Leesville to New Orleans were strictly local or intrastate shipments from Leesville, in Louisiana, to New Orleans, Louisiana, on local or intrastate, and not interstate, bills of lading, and that when affiants, acting for said George Gerdes and for his account, received the said staves and heading- from said Texas & Pacific Railway Company, the obligations of that company and the obligations of the Kansas City Southern Railway Company in respect to said shipments ceased and terminated.

Affiants declare it is true that all of said staves and heading- received as aforesaid from Leesville were shipped from New  
106 Orleans to a foreign port, but that the same were not shipped upon any through bill of lading from Leesville to such foreign port, nor were said staves and heading- delivered by the Texas & Pacific Railway Company to the exporting vessel by which the same were transported to the foreign port to which the same were shipped, but that, after having received the same from said Railroad Company, said staves and heading- were shipped out of the State of

Louisiana by said George Gerdes for account of Friedlander and Oliven, upon a ship's bill of lading, issued on the 25th April, 1905, at the City of New Orleans, and with which bill of lading neither the said Texas & Pacific Railway Company nor the said Kansas City Southern Railway Company had any connection or concern.

Affiants depose further and say that they do not know whether the statement in the bill of complaint that it was well known to the agent of the Kansas City Southern Railway Company at Leesville, Louisiana, that the staves and headings shipped and consigned as aforesaid from that point to George Gerdes at the City of New Orleans were destined for export is true or false; nor do they affirm or deny the statement contained in the bill of complaint that that fact "was noted and indicated by said agent on the receipts and bills of lading furnished the said shipper," Friedlander and Oliven.

Affiant- depose and say, however, that if the said agent of the Kansas City Southern Railway Company at Leesville, Louisiana, did note and indicate any such fact in the three bills of lading hereinbefore referred to, he did so without the knowledge, authority or consent of the said Friedlander and Oliven, the shipper, or of the said George Gerdes, the consignee of same, neither of whom, at any time, ever authorized the agent of said Railway Company at Leesville to insert in said bills of lading any language which would vary, alter or change the written obligations of said Kansas City Southern Railway Company and of said Texas and Pacific Railway Company, its connecting carrier, contained in the local or intra-state bills of lading from Leesville to New Orleans, Louisiana, and the rate fixed by the Railroad Commission of Louisiana for the transportation of staves and headings between New Orleans and points on the Kansas City Southern Railway.

(Signed)

(Signed)

WM. J. DARDIS,  
JOSEPH DARDIS.

Sworn to and subscribed before me this 5th day of January, 1906.

[SEAL.]

(Signed)

ALEXIS BRIAN,

*Notary Public.*

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*Affidavit of Charles S. Elms.*

Filed January 6, 1906.

United States Circuit Court, 5th Circuit, Eastern District of Louisiana, Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

vs.

RAILROAD COMMISSION OF LOUISIANA.

Before me, the undersigned authority, personally came and appeared Charles S. Elms, who, on being duly sworn, deposes and says

that in July, August, September and October, 1905, there were delivered to the St. Louis, Iron Mountain and Southern Railway Company at Olla, Georgetown and Kelly, in the State of Louisiana, by the several shippers named in the seventh paragraph of complainant's bill of complaint, oak staves, headings and poplar logs, consigned to affiant and to Hub Durselen, whose agent affiant was at the time, at the City of New Orleans, Louisiana, and that the same were delivered at said points for carriage to said City of New Orleans by said St. Louis, Iron Mountain and Southern Railway Company, at Alexandria, Louisiana, to the Texas & Pacific Railway Company, which delivered the same at New Orleans to affiant; and affiant declares that on his receiving said staves, headings and logs from said Texas & Pacific Railway Company at New Orleans, and paying to it the charges for the transportation of same from the various points aforesaid to New Orleans, demanded of him by that company, he delivered to that company the several bills of lading covering said shipments, all of which are or should be now in the possession and custody and under the control of that company in New Orleans.

Affiant declares that none of said shipments were made to him at New Orleans on a through bill of lading to any foreign port, and although after receiving the same from the hands of the Texas & Pacific Railway Company at New Orleans, affiant kept the same together until such time as he could collect at that point a sufficient quantity and number of such staves, headings and logs for foreign shipment and export, and did, when he had accumulated a cargo of same, ship the same from the Port of New Orleans to a foreign country, nevertheless the several shipments thereof to affiant were strictly local or intra-state shipments, made at various times, and at no time in a sufficient quantity and number for export shipment.

108 ment, from various points in Louisiana to the City of New Orleans in that State, on local or intra-state, and not interstate, bills of lading.

That one of said shipments, to-wit: a shipment of staves, made July 7th, 1905, by Bradford Bros. to Hub Durselen at New Orleans from Georgetown, on the line of the St. Louis, Iron Mountain and Southern Railway Company, was made on what is known as a Louisiana local bill of lading, the same being a bill of lading adopted by the Railroad Commission of Louisiana to govern and control all shipments between points in the State of Louisiana, and that, at the top of said bill of lading and in red ink, there are printed the following words, viz: "this form of bill of lading is the one prescribed and ordered adopted by the Louisiana Railroad Commission, and is to be used only upon shipments having both origin and destination within the State of Louisiana, and must not be used upon interstate shipments," as will appear by a copy of said form of bill of lading hereto attached and marked Exhibit "A."

Affiant swears further that on the 30th September, 1905, there were three separate shipments of staves, and of staves and headings made by H. F. Bradford to said Hub Durselen from Georgetown, on the line of said St. Louis, Iron Mountain and Southern Railway to the City of New Orleans, and which were received by and receipted

for by affiant, all of which were made by said shipper on bills of lading in every respect similar to the bill of lading a blank form of which is hereto attached and marked Exhibit "B."

Affiant swears further that on the 3d October, 1905, there were two separate shipments of staves and of staves and logs, made by H. F. Bradford to said Hub Durselen from Kelly, on the line of said St. Louis, Iron Mountain and Southern Railway, to the City of New Orleans, and which were received by and receipted for by affiant, both of which shipments were made by said shipper on bills of lading in every respect similar in form to the form of bill of lading hereto attached and marked Exhibit "B."

Affiant declares that when he received said staves, headings and logs from said Texas & Pacific Railway Company, affiant delivered up to said company all of the aforesaid bills of lading, which are now, or should be, in its possession and custody and under its control, and that when he received the same from that railroad company, the obligations of said company and the obligations of the St. Louis, Iron Mountain and Southern Railway in respect to said shipments ceased and terminated.

109 That it is true that all of said staves, headings and logs were shipped by affiant from New Orleans to a foreign port, but that the same were not shipped upon any through bill of lading from the several points of origin to such port, nor were the said staves, headings and logs delivered by the Texas & Pacific Railway Company to the exporting vessel, but that after having received the same from said railroad company, affiant shipped the same out of this state upon a ship's bill of lading, issued to him for the first time at the City of New Orleans, and with which neither the said Texas & Pacific Railway Company nor the St. Louis, Iron Mountain and Southern Railway Company had any concern or connection.

(Signed)

CHARLES S. ELMS.

Sworn to and subscribed before me this 4th day of January, 1906.

[SEAL.]

(Signed)

ALEXIS BRIAN.

*Notary Public.*

EXHIBIT A.

Attached to Affidavit of Elms.

EXHIBIT A.

Filed Jan'y 6, 1906.

Attached to Affidavit of Elms.

Form 1132L.

2-05 50M NK.

[Printed in red ink:]

This form of bill of lading is the one prescribed and ordered adopted by the Louisiana Railroad Commission, and is to be used



only upon shipments having both origin and destination within the State of Louisiana, and must not be used upon interstate shipments.

St. Louis, Iron Mountain & Southern Railway Co.

Rates Guaranteed:

To .....

Charges Advanced, \$.....

..... Station ..... 190..

Received from .....  
110 the following articles, in apparent good order and condition,  
except as hereinbelow noted, marked, consigned and destined  
as indicated below. To be transported to .....  
and there delivered to ..... consignee,  
or order, on payment of the charges herein stipulated. Said trans-  
portation service to be performed on the following terms and condi-  
tions, which are agreed to by both the said carrier and the shipper,  
viz:

The above named carrier shall be liable for the loss, damage or unreasonable delay in delivery of the articles above described, unless said carrier shall show that such loss, damage or delay in delivery has been occasioned by accidental or uncontrollable events, or by vice, condition or qualities of said things, or by some fault of the shipper.

The said carrier shall have a privilege on said goods for the cost of transportation and for all expenses necessarily incurred by him during transportation in order to preserve the said goods or to complete the transportation thereof.

If it should be necessary for said carrier to deliver said goods to any other carrier in order to complete the transportation thereof, then the rights and liabilities of said connecting carrier shall be as herein provided, and no carrier shall be liable for any loss, damage or delay occurring on the line of any succeeding or preceding carrier, provided the preceding carrier shall prove such delivery to the next connecting carrier.

This bill of lading is given subject to correction as to weights and as to Rates and Classification, so as to conform to the rates, rules and regulations approved or established by the Railroad Commission of Louisiana.

The parties hereto may either agree upon the value of the things shipped and fix the same herein, or they may agree that in case of claim being made hereunder, the said value shall be fixed by the value at the time and point of shipment, or that it shall be fixed by the value at the time and point of delivery.

All notices or claims for loss or damage under this bill of lading shall be presented in writing by the shipper, consignee or party in interest to the nearest agent of the carrier intended to be held responsible therefor within ninety days from the date of the delivery of the goods, in case of shortage or delivery in a damaged condition, and within ninety days from the date of the shipment of the goods,





[Printed in red ink across face:]

112 "When the goods or packages are sent to a station where the carrier has no Agent, the shipper authorizes and directs that the carrier shall, upon arrival of the train, by day or by night, and regardless of the weather, deposit the goods or packages upon the platform, whether there shall be anyone there to receive them or not, and the shipper agrees that the carrier's liability shall end upon such deposit, and that such deposit shall be considered a delivery to the consignee."

Duplicate.

EXHIBIT B.

Attached to Affidavit of Chas. S. Elms.

EXHIBIT B.

Filed Jan'y 6, 1906.

Attached to Affidavit of Chas. S. Elms.

This form of bill of lading is the one prescribed and ordered adopted by the Louisiana Railroad Commission, and is to be used only upon shipments having both origin and destination within the State of Louisiana, and must not be used upon interstate shipments.

.....  
(Insert full name of carrier.)  
.....

Rates Guaranteed:

To.....  
Charges Advanced, \$.....  
Advanced Charges  
for Demurrage, \$.....

..... Station ..... 190..

Received from ..... the shipper, the following articles, in apparent good order and condition, except as hereinbelow noted, marked, consigned and destined as indicated below. To be transported to ..... and there delivered to ..... consignee, or order, on payment of the charges herein stipulated. Said transportation service to be performed on the following terms and conditions, which are agreed to by both the carrier and the shipper, viz:

113 The above named carrier shall be liable for the loss, damage or unreasonable delay in delivery of the articles above described, unless said carrier shall show that such loss, damage or delay in delivery has been occasioned by accidental or uncontrollable events, or by vice,

condition or qualities of said things, or by some fault of the shipper.

The said carrier shall have a privilege on said goods for the cost of transportation and for all expenses necessarily incurred by him during transportation in order to preserve the said goods or to complete the transportation thereof.

If it should be necessary for said carrier to deliver said goods to any other carrier in order to complete the transportation thereof, then the rights and liabilities of said connecting carrier shall be as herein provided, and no carrier shall be liable for any loss, damage or delay occurring on the line of any succeeding or preceding carrier, provided the preceding carrier shall prove such delivery to the next connecting carrier.

This bill of lading is given subject to correction as to weights and as to Rates and Classification, so as to conform to the rates, rules and regulations approved or established by the Railroad Commission of Louisiana.

The parties hereto may either agree upon the value of the things shipped and fix the same herein, or they may agree that in case of claim being made hereunder, the said value shall be fixed by the value at the time and point of shipment, or that it shall be fixed by the value at the time and point of delivery.

All notice or claims for loss or damage under this bill of lading shall be presented in writing by the shipper, consignee or party in interest to the nearest agent of the carrier intended to be held responsible therefor within ninety days from the date of the delivery of the goods, in case of shortage or delivery in a damaged condition, and within ninety days from the date of the shipment of the goods, in case no delivery thereof has been made; otherwise the same shall be barred and conclusively presumed to have been abandoned; provided that any notice or claim not returned or declined within ninety days after receipt thereof by said railroad company shall be deemed to have been allowed by said company. All suits for loss or damage hereunder shall likewise be barred and conclusively presumed to have been abandoned and waived, unless brought within one year from the date of the shipment.

114 Whenever goods are loaded by the shipper, the carrier may stipulate in said bill of lading, by the words "Shipper's Load and Count," that in case of loss or damage, the burden of proof as to quantity and condition of the goods when delivered shall rest upon the shipper.

If delivery be made to the carrier at any other place than an agency station, its liability as carrier shall not commence until actual possession be taken by it of the goods; provided, that the carrier is not chargeable with unreasonable delay in taking possession.

The acceptance by the shipper of this bill of lading shall constitute an assent on his part to all its terms and conditions.

No other stipulations or exemptions shall be inserted in this bill of lading except such as shall have been approved and allowed by the Railroad Commission of Louisiana.

Consigned to Shipper's Order.

At New Orleans, La.

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[illegible]

Notify Hub Durselen,  
1021 Hennen Building,  
New Orleans, La.

Signed by .....  
In Ink.

(State Official Position)  
Representing and Acting for Above Carrier.

Date .....

[Printed on margin:]

All bills of lading should be made out and signed in ink. Make separate bills of lading for each car.

115                      *Affidavit of Walter Guion.*

Filed January 6, 1906.

U. S. Circuit Court, Fifth Circuit, Eastern District of Louisiana,  
Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY Co. et al.  
vs.  
RAILROAD COMMISSION OF LOUISIANA.

Before me, the undersigned authority, personally came and appeared Walter Guion, who, on being duly sworn, deposes and says

that he is the duly qualified attorney general of the State of Louisiana; that, as such, it is made his duty by the constitution of that State, adopted on the 12th day of May, 1898, to represent the Railroad Commission of said State, in all matters, as its attorney, and that, by virtue of his said office of attorney general, it is made his duty to represent the State of Louisiana in the collection of all penalties imposed by that commission for the violation of any of its orders by suit brought by him in the name and for account of the State of Louisiana.

That the Railroad Commission of Louisiana did, by its order No. 476, entered on the 10th November, 1905, find that the Texas & Pacific Railway Company and the Kansas City Southern Railway Company had each separately and repeatedly wilfully violated its order No. 410, adopted by said commission on the 15th day of November, 1904, and reaffirmed by its order No. 415, adopted on the 21st of December, 1904, fixing a rate of ten cents per hundred pounds for the transportation of staves in carload lots from points on the said Kansas City Southern Railway by connecting carriers to New Orleans, all in the State of Louisiana, by charging, demanding and collecting a higher and greater rate than the rate fixed by said commission in and by its said orders on shipments of staves consigned to New Orleans on local bills of lading, and that it did, as it has the legal right, power and authority to do, impose a several and separate penalty upon each of said Kansas City Southern Railway Company and said Texas and Pacific Railway Company to be forfeited and paid by them severally to the State of Louisiana, on or before the 20th November, 1905, the sum of two thousand dollars each, as the whole will fully appear by a copy of said order No. 276 hereto attached as part hereof and marked Exhibit "A."

116 Affiant declares further that the Railroad Commission of Louisiana did, by its order No. 477, entered on the 10th November, 1905, find that the Texas & Pacific Railway Company and the St. Louis, Iron Mountain and Southern Railway Company had each separately and repeatedly wilfully violated its order No. 445 adopted by said commission on the 25th May, 1905, fixing a rate of ten cents per hundred pounds for the transportation of staves in carloads from points on the said St. Louis, Iron Mountain & Southern Railway, by connecting carriers to New Orleans, all in the State of Louisiana, by charging, demanding and collecting a higher and greater rate than the rate fixed by said commission in and by its said order on shipments of staves, headings and logs consigned to New Orleans on local bills of lading, and that it did, as it had the legal right, power and authority to do, impose a several and separate penalty upon each of said St. Louis, Iron Mountain and Southern Railway and said Texas & Pacific Railway Company, to be forfeited and paid to the State of Louisiana, on or before the 20th November, 1905, in the sum of two thousand dollars each, as the whole will fully appear by a copy of said order No. 477 hereto attached as part hereof and marked Exhibit B.

Affiant declares further that previous and up to the time of the

filing of the bill of complaint herein, affiant had asserted a right and intention on his part, as the legal representative of the State of Louisiana, to bring four separate and distinct suits in the Twenty-second Judicial District Court of the State of Louisiana in and for the Parish of East Baton Rouge against each of the several complainants, in order to recover for account of the State of Louisiana the four separate, distinct and several penalties imposed by the Railroad Commission of Louisiana, each in the sum of two thousand dollars, and that affiant would have brought each of said four suits against said defendants in four separate actions in said State Court, but for the order of this Honorable Court to show cause why he should not be restrained from so doing.

Affiant declares that, under the constitution and laws of this State, he has no discretion, as attorney general of Louisiana, in respect to the bringing of such suits; that the same would be and are suits brought by the State of Louisiana in her sovereign capacity and character; and that by the amended and supplemental bill filed by complainants herein they are seeking to restrain the State of Louisiana, in her sovereign capacity and character, acting  
 117 through affiant, her law officer, from instituting actions in her own Courts, for the recovery of penalties imposed by the Railroad Commission of Louisiana in, through and by suits which are not suits of a civil nature and in each of which there would be involved an amount less than the amount necessary to give jurisdiction to the Honorable the United States Circuit Court for the Fifth Circuit and Eastern District of Louisiana; and that if said Court should grant a restraining order herein, as prayed for, the effect of such order would be to prevent and prohibit the State of Louisiana, as a sovereign State, acting through and represented by affiant as her law officer, from bringing such suits in her own Courts, which affiant declares said Honorable Circuit Court of the United States is without right, power or authority to do, as the State of Louisiana cannot be restrained or prevented, by any process whatever, from bringing a suit or suits for the enforcement of the laws of said State which are of a penal nature, or for the collection and recovery of penalties imposed by virtue of her constitution and laws, and that the State of Louisiana cannot be sued, or be made a party to any suit, in any Court of the United States.

(Signed)

WALTER GUION.

Sworn to and subscribed before me this 5th day of January, 1906.

[SEAL.]

(Signed)

ALEXIS BRIAN.

Notary Public.

EXHIBIT "A"—ATTACHED TO AFFIDAVIT OF WALTER GUION,  
ATT'Y GEN.

Filed Jan. 6, 1906.

Railroad Commission of Louisiana.

*Order No. 476.*

RAILROAD COMMISSION OF LOUISIANA

VS.

KANSAS CITY SOUTHERN RAILWAY COMPANY, TEXAS & PACIFIC  
RAILWAY COMPANY.

Violation of Rates Established by the Commission.

Heard November 8th, 1905.

After notice to and hearing of the defendant companies in  
118 this case, and after due consideration of the record, the com-  
mission finds that its Order No. 410, adopted November 15th,  
1904, and reaffirmed by its Order No. 415, adopted December 21st,  
1904, fixing a rate of ten cents per hundred pounds on staves in ear-  
load lots, from points on the Kansas City Southern Railway to New  
Orleans, has been wilfully and repeatedly violated by both the Kansas  
City Southern Railway Company and the Texas & Pacific Railway  
Company, in that they have charged, demanded and collected a rate  
higher than the rate fixed by the commission in its said Order No.  
410, on shipments of staves consigned to New Orleans on local bills  
of lading.

It is therefore ordered:

That in accordance with the provisions of article 286 of the Con-  
stitution of Louisiana the Kansas City Southern Railway Company  
and the Texas & Pacific Railway Company, shall each and severally  
forfeit and pay to the State on or before November 20th, 1905, the  
sum of two thousand (\$2,000.00) dollars, for the said violation of  
the commission's orders and rates.

By order of the commission.

Baton Rouge, Louisiana, November 10, 1905.

C. L. DE FUENTES, *Chairman.*  
W. L. FOSTER.  
OVERTON CADE.

W. M. BARROW, *Secretary.*

Order No. 477 of the Railroad Commission of Nov. 10, 1905, here-  
tofore printed at page 17.

\* \* \* \* \*

*Affidavit of C. L. DeFuentes.*

Filed Jan'y 6, 1906.

United States Circuit Court, Fifth Circuit, Eastern District of  
Louisiana, Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY CO. et al.  
vs.  
RAILROAD COMMISSION OF LOUISIANA.

Before me, the undersigned authority, personally came and  
119 appeared C. L. DeFuentes, who on being duly sworn deposes  
and says that he is the chairman of the Railroad Commission  
of Louisiana, and that he has held that office continuously for several  
years past. Affiant declares that the order of the Railroad Commission  
of Louisiana, known and designated as Order No. 445, is an  
order which the Railroad Commission had a legal right to adopt,  
and that by said order a rate of ten cents per hundred pounds, with  
thirty thousand pounds as a minimum carload, was fixed on lumber,  
logs and staves thereafter carried by connecting carriers between stations  
in Louisiana on the line of the St. Louis, Iron Mountain &  
Southern Railway Company and the City of New Orleans.

Affiant declares that in July, August, September and October,  
1905, there were delivered to the St. Louis, Iron Mountain & Southern  
Railway Company at Olla, Georgetown and Kelly, in the State  
of Louisiana, by the several shippers named in the seventh paragraph  
of complainant's bill of complaint, oak staves and poplar  
logs consigned to Charles S. Elms and Hub Durselen, at the City of  
New Orleans, Louisiana, and that the same were delivered for carriage  
to said City of New Orleans by said railroad company at Alexandria,  
Louisiana, to the Texas & Pacific Railway Company, which delivered  
the same at New Orleans to said consignee, but affiant declares that,  
to the best of his knowledge and belief, if the same were at the time  
of such delivery and at all times thereafter intended and destined  
by the shippers and consignee to be exported to foreign countries  
from the City of New Orleans, the same were not shipped on a through  
bill of lading to any foreign port; and affiant declares that he verily  
believes that, at the time said staves and logs were delivered to said  
St. Louis, Iron Mountain and Southern Railway Company at the said  
various points of shipment on said line of railway, said shipments  
were made for delivery of said staves and logs at New Orleans to  
the consignees aforesaid and not to any consignee in a foreign port,  
and that while the same or only a part thereof may have been  
exported from the City of New Orleans, nevertheless the destination  
of said staves and logs was the City of New Orleans, State of  
Louisiana, as shown by the bills of lading calling for the shipment  
of same to that point from the various other points in the State  
of Louisiana.



Affiant declares further that the Railroad Commission of Louisiana did, by its Order No. 410, establish and put into effect a rate of ten cents per hundred pounds on staves carried between all points

in the State of Louisiana on the line of the Kansas City Southern Railway and New Orleans in said State, via the

120 Louisiana Western Railway and Morgan's Louisiana & Texas Railroad & Steamship Company; that by its Order No. 419 said Railroad Commission provided that "where there are two or more lines between any two points in Louisiana, having through connections, the lowest rate established between such points shall be charged by the other lines accepting freight for transportation between said points. The rates from intermediate stations will not be affected by this ruling;" and that the effect of the foregoing Order No. 419, as construed and applied by the Railroad Commission of Louisiana, had been and was to put into effect a rate of ten cents per hundred pounds on lumber, staves and logs carried between all points in Louisiana on the line of the Kansas City Southern Railway and New Orleans, in said State, via the line of the Texas & Pacific Railway Company.

Affiant declares that in March, 1905, there was delivered to the Kansas City Southern Railway Company by Friedlander and Oliven, at Leesville, a station in Louisiana on the line of the said Kansas City Southern Railway, a considerable number of oak staves and headings consigned to George Gerdes at New Orleans, Louisiana, which were loaded into three cars of the Texas & Pacific Railway Company, Nos. 7035, 6451 and 7426, which were so delivered for delivery at New Orleans, but affiant declares that to the best of his knowledge and belief the same were not at the time of such delivery and at all times thereafter intended and destined by the shipper and the consignee to be exported to foreign countries from New Orleans.

Affiant declares further that he has been reliably informed, and therefore verily believes and so declares, that to the best of his knowledge and belief said shipment of staves and headings was made on bills of lading from Leesville to New Orleans, and that if the said staves and headings were intended for foreign export the same were not transported from Leesville, Louisiana, to any foreign port as a continuous carriage, but only from Leesville to New Orleans.

Affiant declares that he has been reliably informed and therefore believes that the said staves and headings were thus transported by the Kansas City Southern Railway over its line to a point of connection with the line of the Texas & Pacific Railway Company and there delivered to the latter company and by it transported to the City of New Orleans, and that on the arrival of same in New

Orleans the said staves and headings were delivered by said

121 Texas and Pacific Railway Company to said George Gerdes, the consignee thereof, but affiant declares that he has been reliably informed and therefore verily believes it to be a fact that the same were not delivered by said Texas & Pacific Railway Company to the steamship West Point as declared in the bill of complaint herein, but that if the same were so delivered the said delivery

was made by said George Gerdes, after the shipment of said staves and heading to New Orleans from Leesville, both in the State of Louisiana, had been completed and as a separate and distinct shipment having no connection with or relation to the original shipment of said staves on bills of lading from Leesville to New Orleans.

Affiant declares on oath that the Railroad Commission of Louisiana will not attempt to enforce the aforesaid Orders Nos. 410 and 445, nor that part of Order #419 complained of, during the pendency of this suit, nor until it will have been judicially determined and declared that said orders are legally enforceable, and that not only will the Railroad Commission of Louisiana not endeavor to collect from the complainant named in the bill of complaint herein penalties in respect of other shipments similar to and carried under similar conditions and circumstances to the shipments concerning which allegations are made in the bill of complaint, and that the Railroad Commission of Louisiana will not attempt to enforce said orders or to collect penalties from said complainants in respect of shipments similar in character to the shipments described in the bill of complaint, for the reason that said Railroad Commission of Louisiana has no right or power and is absolutely without authority to proceed to collect or enforce the collection of such penalties, which under the constitution of Louisiana must be sued for and recovered by the State of Louisiana in a suit brought by her.

That an injunction is not necessary in order to restrain or prevent the Railroad Commission of Louisiana from enforcing or attempting to enforce the Orders Nos. 476 and 477 entered by that commission, and which are complained of in the bill of complaint herein for the reason that said commission has no power or authority to collect or enforce the payment of same.

(Signed)

C. L. DE FUENTES.

Sworn to and subscribed before me this 4th day of January, 1906.

[SEAL.]

(Signed)

ALEXIS BRIEN,

Notary Public.

122

*Affidavit of W. M. Barrow.*

Filed January 6, 1906.

United States Circuit Court, Fifth Circuit, Eastern Dist. of Louisiana, Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY Co. et al.

vs.

RAILROAD COMMISSION OF LOUISIANA.

Before me, the undersigned authority, personally came and appeared, W. M. Barrow, who, on being duly sworn, deposes and says that he is the secretary of the Railroad Commission of Louisiana,

and that he has held that office continuously for several years past. Affiant declares that the order of the Railroad Commission of Louisiana, known and designated as Order No. 445, is an order which the Railroad Commission had a legal right to adopt, and that by said order a rate of ten cents per hundred pounds, with thirty thousand pounds as a minimum carload, was fixed on lumber, logs and staves thereafter carried by connecting carriers between stations in Louisiana on the line of the St. Louis, Iron Mountain and Southern Railway Company and the City of New Orleans.

Affiant declares that in July, August, September and October, 1905, there were delivered to the St. Louis, Iron Mountain and Southern Railway Company at Olla, Georgetown and Kelly, in the State of Louisiana, by the several shippers named in the seventh paragraph of complainant's bill of complaint, oak staves and poplar logs consigned to Charles S. Elms and Hub Durselen, at the City of New Orleans, Louisiana, and that the same were delivered for carriage to said City of New Orleans by said railroad company, at Alexandria, Louisiana, to the Texas and Pacific Railway Company, which delivered the same at New Orleans to said consignee, but affiant declares that, to the best of his knowledge and belief, if the same were at the time of such delivery and at all times thereafter, intended and destined by the shippers and consignee to be exported to foreign countries from the City of New Orleans, the same were not shipped on a through bill of lading to any foreign port; and affiant declares that he verily believes that at the time said staves and logs were delivered to said St. Louis, Iron Mountain and Southern Railway Company at the said various points of shipment on said line of railway, said shipments were made for delivery

123 of said staves and logs at New Orleans to the consignee aforesaid and not to any consignee in a foreign port, and that while the same or only a part thereof may have been exported from the City of New Orleans, nevertheless the destination of said staves and logs was the City of New Orleans, State of Louisiana, as shown by the bills of lading calling for the shipment of same to that point from the various other points in the State of Louisiana.

Affiant declares further that the Railroad Commission of Louisiana did, by its Order No. 410, establish and put into effect a rate of ten cents per hundred pounds on staves carried between all points in the State of Louisiana on the line of the Kansas City Southern Railway and New Orleans, in said State, via the Louisiana Western Railway and Morgan's Louisiana and Texas Railroad and Steamship Company; that, by its Order No. 419 said Railroad Commission provided that "where there are two or more lines between any two points in Louisiana, having through connections, the lowest rate established between such points shall be charged by the other lines accepting freight for transportation between said points. The rates from intermediate stations will not be affected by this ruling;" and that the effect of the foregoing Order No. 419, as construed and applied by the Railroad Commission of Louisiana, has been and was to put into effect a rate of ten cents per hundred pounds on lumber, staves and logs carried between all points in Louisiana on the

line of the Kansas City Southern Railway and New Orleans, in said State, via the line of the Texas & Pacific Railway Company.

Affiant declares that in March, 1905, there were delivered to the Kansas City Southern Railway Company by Friedlander and Oliven at Leesville, a station in Louisiana on the line of the said Kansas City Southern Railway, a considerable number of oak staves and headings consigned to George Gerdes at New Orleans, Louisiana, which were loaded into three cars of the Texas & Pacific Railway Company, Nos. 7035, 6451 and 7426 which were so delivered for delivery at New Orleans, but affiant declares that to the best of his knowledge and belief the same were not at the time of such delivery and at all times thereafter intended and destined by the shipper and the consignee to be exported to foreign countries from New Orleans.

Affiant declares further that he has been reliably informed and therefore verily believes and so declares that to the best of his knowledge and belief said shipment of staves and headings was made on bills of lading from Leesville to New Orleans, and 124 that if the said staves and headings were intended for foreign export the same were not transported from Leesville, Louisiana, to any foreign port as a continuous carriage but only from Leesville to New Orleans.

Affiant declares that he has been reliably informed and therefore believes that the said staves and headings were thus transported by the Kansas City Southern Railway over its line to a point of connection with the line of the Texas & Pacific Railway Company and there delivered to the latter company and by it transported to the City of New Orleans, and that on the arrival of same in New Orleans the said staves and headings were delivered by said Texas & Pacific Railway Company to said George Gerdes, the consignee thereof, but affiant declares that he has been reliably informed and therefore verily believes it to be a fact that the same were not delivered by said Texas & Pacific Railway Company to the steamship West Point as declared in the bill of complaint herein, but that if the same were so delivered the said delivery was made by said George Gerdes, after the shipment of said staves and heading to New Orleans from Leesville, both in the State of Louisiana, had been completed and as a separate and distinct shipment having no connection with or relation to the original shipment of said staves on bills of lading from Leesville to New Orleans.

Affiant declares, on oath, that the Railroad Commission of Louisiana will not attempt to enforce the aforesaid orders Nos. 410 and 445, nor that part of order No. 419, complained of, during the pendency of this suit, nor until it will have been judicially determined and declared that said orders are legally enforceable, and that not only will the Railroad Commission of Louisiana not endeavor to collect from the complainants named in the bill of complaint herein penalties in respect of other shipments similar to and carried under similar conditions and circumstances to the shipments concerning which allegations are made in the bill of complaint, and that the Railroad Commission of Louisiana will not attempt to enforce said orders or to collect penalties from said com-

plainants in respect of shipments similar in character to the shipments described in the bill of complaint, for the reason that said Railroad Commission of Louisiana has no right or power and is absolutely without authority to proceed to collect or enforce the collection of such penalties, which under the Constitution of Louisiana must be sued for and recovered by the State of Louisiana in a suit brought by her.

That an injunction is not necessary in order to restrain  
125 or prevent the Railroad Commission of Louisiana from enforcing or attempting to enforce the orders Nos. 476 and  
477 entered by that Commission, and which are complained of in the bill of complaint herein for the reason that said Commission has no power or authority to collect or enforce the payment of same.

(Signed)

W. M. BARRON.

Sworn to and subscribed before me this 4th day of January, 1906.

[SEAL.]

(Signed)

ALEXIS BRIAN.

*Notary Public.*

*Hearing and Submission of Rule.*

Extract from the Minutes, November Term, 1905.

NEW ORLEANS, SATURDAY, *January 6, 1906.*

Court met pursuant to adjournment.

Present: Hon. Charles Parlange, District Judge.

No. 55. B. R. Div.

THE TEXAS & PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, KANSAS CITY SOUTHERN RAILWAY COMPANY

vs.

THE RAILROAD COMMISSION OF LOUISIANA.

This cause came on this day before the Court to be heard upon the rule of complainants for an injunction herein.

Howe, Spencer & Cocke and Alexander & Wilkinson appearing for the complainants;

Walter Guion, Attorney General of Louisiana, for the defendant.

After the reading of affidavits pro and con and hearing the arguments of counsel for the respective parties, the matter was submitted—when the Court took time to consider.

*Affidavit of James L. Roach.*

Filed January 9th, 1906.

U. S. Circuit Court, 5th Circuit, Eastern District of Louisiana,  
Baton Rouge Division.

No. 55.

THE TEXAS & PACIFIC RAILWAY CO. et al.  
vs.  
RAILROAD COMMISSION OF LOUISIANA et al.

Before me, the undersigned authority, personally came and appeared James L. Roach, who on oath deposes and says that he is now and was on the 22nd day of April, 1905, in the employ of the Texas Transport and Terminal Company, doing business in the City of New Orleans as agents of the Hamburg American Line, a line of steamships running from the port of New Orleans to foreign ports.

That affiant on the 22d of April, as well as on the 23d and the 24th of April, 1905, was employed as a clerk of that company, and that he superintended the discharge and delivery of certain staves and heading consigned to George Gerdes at the City of New Orleans, and contained in cars No. 7035, 6450 and 7426 of the Texas & Pacific Railway Company.

Affiant declares that in superintending the discharge from said cars of the staves and heading contained therein, he was representing George Gerdes, the consignee thereof, and that in superintending the delivery of the same to the vessel known as the West Point of the Hamburg American Line, he was acting for account of said George Gerdes.

That affiant attends to all of the discharging of staves and heading for George Gerdes in instances where the same are intended for export shipment aboard the vessels of the Hamburg American Line.

Affiant declares that the delivery to the West Point of the staves and heading consigned to George Gerdes, and contained in the cars of the Texas & Pacific Railway Co., No. 7035, 6450 and 7426, was not made by the Texas & Pacific Railway Company, but that affiant, acting for and representing George Gerdes, superintended the receiving of the same from said railroad company's cars which were

then upon the tracks of the Southern Pacific Railway Company, to which they had been switched under the orders of George Gerdes, who paid the switch charges for the same.

That car No. 7035 was discharged April 22, 1905; car No. 6450 was discharged on the 23 — April, 1905 and car No. 7426 was discharged on the 24th — April, 1905; and affiant further declares that for the unloading of said cars he was paid by George Gerdes, the consignee of the staves contained therein, and that he received no pay or compensation for so doing from the Texas and Pacific Railway Company.

(Signed)

JOS. LEA ROACH,

Sworn to and subscribed before me this 9th day of January, 1906.

[SEAL.]

(Signed)

THAD. J. CLARK,

*Notary Public.*

*Memorandum of Reasons for Issuing Preliminary Injunction.*

Filed Jan. 25, '06.

United States Circuit Court, Eastern District of Louisiana.

No. 55. In Equity.

THE TEXAS & PACIFIC RAILWAY Co. et al.

vs.

THE RAILROAD COMMISSION OF LOUISIANA.

*Memorandum of Reasons for Issuing Preliminary Injunction*

PARLANGE, *District Judge:*

Even if it be not true that complainants are entitled to a preliminary injunction under the positive provisions of Articles 285 and 286 of the Constitution of the State of Louisiana of the year 1898, they are certainly entitled to the writ under the doctrine stated by Circuit Judge Shelby, as the organ of the Circuit Court of Appeals for this Circuit, in the case of *Massie vs. Buck*, 128 F. R., at page 31.

See also: C. C. A. 5th Circuit in *Kerr vs. New Orleans*, 126 F. R., p. 924; *Gring vs. Chesapeake & Canal Co.*, 129 F. R., p. 996; C. C. A. 5th Circuit in *R. R. Commission vs. Rosenbaum Grain Co.*, 130 F. R., p. 110; C. C. A. 8th Circuit in *City of Newton vs. Levis*, 79 F. R., p. 717; C. C. A. 8th Circuit in *Allison vs. Corson*, 88 F. R., p. 584; C. C. A. 8th Circuit in *Dimick vs. Shaw*, 94 F. R., p. 266.

The preliminary injunction will issue on complainants giving good and sufficient bond as surety in the sum of five thousand dollars (\$5,000).

128 *Order Granting Preliminary Injunction.*

Filed Jan. 25, 1906.

U. S. Circuit Court, Eastern District of Louisiana, Baton Rouge Division.

No. 55. In Equity.

THE TEXAS & PACIFIC RAILWAY Co. et al.

vs.

THE RAILROAD COMMISSION OF LOUISIANA.

This cause came on at a former day to be heard upon the application of the complainants for a preliminary injunction herein, and



was argued by counsel for the respective parties and submitted to the Court:

Whereupon, on due consideration thereof, it is now ordered by the Court, for the reasons this day filed, that a preliminary injunction issue herein as prayed for in the bill of complaint, on complainants giving good and sufficient bond and surety in the sum of five thousand (\$5,000) dollars, to be approved by the Court.

It is further ordered that Wm. Grant, Esq., be, and he is hereby, appointed Special Master in Chancery in this cause and he is empowered and directed to hear and take all testimony and evidence in the case, and to report fully on all questions of law and fact in this cause.

New Orleans, La., January 5th, 1906.

(Signed)

CHARLES PARLANGE,

U. S. Judge.

*Bond on Preliminary Injunction.*

Filed Jan. 27, 1906.

In the United States Circuit Court, Fifth Circuit and Eastern District of Louisiana, Baton Rouge Division.

No. 55. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY

VS.

RAILROAD COMMISSION OF LOUISIANA et al.

UNITED STATES,

*State of Louisiana,*

*City of New Orleans, ss:*

Know all men by these presents, that we, The Texas & Pacific Railway Company, the St. Louis, Iron Mountain & Southern Railway Company as the Kansas City Southern Railway Company, as principals, and Pearl Wright of the City of New Orleans, State of Louisiana, as surety, are firmly held and bound unto the Railroad Commission of Louisiana in the full sum of five thousand dollars (\$5,000) lawful money of the United States of America, for payment of which we do hereby bind ourselves, heirs and assigns.

Thus done and signed in the City of New Orleans, this 26th day of January, 1906.

Now the condition of this obligation is such: Whereas the above named principals have filed their bill in the United States Circuit Court for the Eastern District of Louisiana, Baton Rouge Division, praying that an injunction issue against the Railroad Commission of Louisiana and another, restraining and enjoining said Commission and the Attorney General from instituting suits to recover cer-



tain fines and penalties imposed by said Railroad Commission upon said principals; and,

Whereas, the Honorable the Judge of the United States Circuit Court for the Eastern District of Louisiana did, on January 25th, 1906, enter an order or decree enjoining and restraining said Railroad Commission of Louisiana and said Attorney General from instituting any suits or taking any steps for the collection of the fines imposed by said Railroad Commission upon said principals pending final determination of said suit.

Now, therefore, if said principals shall well and truly pay all and singular the damages which may be sustained by the Railroad Commission of Louisiana by reason of the issuance of said preliminary injunction in case it should be hereafter decided that such injunction was improperly issued, then this obligation shall be null and void, otherwise to remain in full force and effect.

|          |  |
|----------|--|
| (Signed) | THE TEXAS & PACIFIC RAILWAY<br>COMPANY.            |
| "        | By HOWE, SPENCER & COCKE.                          |
| "        | THE ST. LOUIS IRON MOUNTAIN<br>& SOUTHERN RY. CO., |
| "        | By W. B. SPENCER, <i>Att'y.</i>                    |
| "        | THE KANSAS CITY SOUTHERN<br>RAILWAY COMPANY.       |
| "        | By HOWE, SPENCER & COCKE                           |
| "        | PEARL WIGHT.                                       |

130 UNITED STATES OF AMERICA,  
*State of Louisiana,*  
*City of New Orleans, ss:*

Personally came and appeared before me, the undersigned authority, Pearl Wight, who declared that he resided in the City of New Orleans, State of Louisiana; that exclusive of all exemptions allowed by law, he is worth the sum of five thousand dollars (\$5,000) over and above all debts and liabilities.

(Signed) PEARL WIGHT.

Sworn to and subscribed before me this 26th day of January, 1906.  
[SEAL.] (Signed) CHAS. L. DENECHAUD.

This bond and the surety approved.  
January 27th, 1906.

(Signed) CHARLES PARLANGE.  
*U. S. Judge.*

*Injunction Issued to Railroad Commission of Louisiana, and to  
Walter Guion, Att'y Gen'l of Louisiana.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and Eastern  
District of Louisiana.

No. 55. Baton Rouge Div.

THE TEXAS & PACIFIC RAILWAY CO., THE ST. LOUIS, IRON MOUNTAIN  
and Southern Railway Co., and The Kansas City Southern  
Railway Co.

VS.

THE RAILROAD COMMISSION OF LOUISIANA and WALTER GUION,  
Who is Attorney General of the State of Louisiana.

The President of the United States of America to The Railroad  
Commission of Louisiana, through its proper officer, and to Walter  
Guion, who is Attorney General of the State of Louisiana, Greeting:

Whereas, it has been represented unto us in our said Circuit Court  
on the part of The Texas and Pacific Railway Company, The St.  
Louis Iron Mountain & Southern Railway Co. and the Kan-  
sas City Southern Railway Co. in a bill in equity lately ex-  
hibited against you and each of you touching certain matters  
and things therein set forth.

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Railroad Commission of Louisiana, and you the said Walter Guion, Attorney General of the State of Louisiana, your attorneys and each of you, are hereby commanded and strictly enjoined under the penalty of the law, that you absolutely refrain and desist from in any wise attempting to enforce the orders of said Railroad Commission of date November 10th, 1905, and designated as orders Nos. 476 and 477; and from in any wise attempting to collect, and from directing the collection of the penalties imposed on complainants by said orders; and from imposing, or attempting to impose upon, and from collecting, or attempting to collect from complainants any other or further penalties for non-observance of its said orders Nos. 445, 419 and 410, in respect of and in connection with shipments of logs, staves and lumber destined for, and being subjects of interstate and foreign commerce, which have since, the promulgation of said orders Nos. 445, 419 and 410, and since the promulgation of said orders Nos. 476 and 477, been carried by complainants or which may hereafter be carried by them, severally or jointly, from Olla, Georgetown Kelly or Leesville, Louisiana, or from any other points of shipment in Louisiana, taking or to which apply the rate established, published and filed with the Interstate Commerce Commission by complainants,

and that you remain so inhibited and enjoined until the further order of our said Court in the premises.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at the City of New Orleans, this 27 day of January, in the year of our Lord, 1906.

(Signed) H. J. CARTER, *Clerk*,  
" E. M. FULLER, *D'y Clerk*.

[SEAL.]

*Marshal's Return.*

Filed Jan. 29, 1906.

Received by U. S. Marshal, New Orleans, La., Jan. 29/06, and on the same day, month and year I served copy hereof on the parties

hereafter named in the City of New Orleans, Louisiana, in 132 the manner following, to-wit: The Railroad Commission of Louisiana by handing same to the president thereof, Mr. C. L. DeFuentes, in person; on Walter Guion, Attorney General of Louisiana, by handing same to him in person.

(Signed)

VICTOR LOISEL,  
*U. S. Marshal*,  
By T. I. GALBRETH, *D'y*.

[Indorsed:] Return. U. S. Circuit Court, Eastern District of Louisiana, New Orleans Division. No. 55 B. R. The Texas & Pacific Railway Co., The St. Louis, Iron Mountain and Southern Railway Co., and The Kansas City Southern Railway Co. vs. The Railroad Commission of Louisiana and Walter Guion, who is Attorney General of the State of Louisiana. Injunction to —.

*Application for Appeal.*

Filed Jan'y 29, 1906.

Circuit Court of the United States for the Eastern District of Louisiana, Baton Rouge Division.

No. 55. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

vs.

RAILROAD COMMISSION OF LOUISIANA et als.

The above named defendants, the Railroad Commission of Louisiana, and Walter Guion, Attorney General of the State of Louisiana, conceiving themselves aggrieved by the decree made and entered on the 25th day of January, 1906, in the above numbered and entitled cause, granting a preliminary injunction herein, do hereby appeal from said order and decree of the United States Circuit Court of

Appeals for the Fifth Circuit, for the reasons specified and set forth in the assignment of errors which is filed herewith; and they pray that this appeal may be allowed returnable according to law, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit.

133 New Orleans, January 29, 1906.

(Signed)

WALTER GUION,

*Solicitor for Defendants, the Railroad Commission of Louisiana, and Walter Guion, Attorney General of Louisiana.*

*Order.*

The foregoing claim of appeal is allowed returnable in ten days, and bond is hereby fixed at the sum of two hundred and fifty dollars.  
New Orleans, Jan'y 29, 1906.

(Signed)

CHARLES PARLANCE,

*U. S. Judge.*

*Assignment of Errors.*

Filed January 29, 1906.

Circuit Court of the United States for the Eastern District of Louisiana, Baton Rouge Division.

No. 55. In Equity.

THE TEXAS & PACIFIC RAILWAY COMPANY et als.

vs.

THE RAILROAD COMMISSION OF LOUISIANA et als.

And now on the 29th day of January, 1906, come the Railroad Commission of Louisiana, and Walter Guion, Attorney General of Louisiana, defendants in the above numbered and entitled cause, by Walter Guion, their solicitor, and having prayed an appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the decree of said Circuit Court, and rendered and entered herein on the 25th day of January, 1906, granting a preliminary injunction, and ordering an injunction to issue pursuant to the prayer of the bill of complaint in this cause, respectfully represent, as grounds of appeal and as an assignment of errors herein, and say that the said decree of said Circuit Court is erroneous and against the just rights of said defendants and those whom they represent, for the following reasons, and that said Circuit Court erred in the following particulars, to-wit:

First. That the bill of complaint filed in this cause does not state a case which entitles, or would entitle, the complainants to the writ of injunction, and it therefore should not be issued.

134 Second. That the writ of injunction should not have been granted by this Honorable Court to stay proceedings in the State Courts of the State of Louisiana, as the issuance of same would be, and is, in direct violation of Section 720 of the Revised Statutes of the United States.

Third. That this Honorable Court is without jurisdiction to restrain or prevent, by injunction, the institution of a suit, or of several suits if separately brought against complainants in the State Courts of the State of Louisiana, to recover penalties imposed upon complainants by the Railroad Commission of Louisiana for the violation of its orders, because such suit or suits, when brought, would be suits brought against complainants by the State of Louisiana in her sovereign capacity and character, under Article 266 of the Constitution of the State of Louisiana, and because such restraining order, or order of injunction, preventing or prohibiting the institution of such suit or suits against complainants, would be, in effect, and operate as an order of injunction against the State of Louisiana, and would have the effect of preventing the State of Louisiana, by injunction, from recovering in a State Court of that state, in a suit or suits which it is made the duty of the Attorney General of that state to bring in his official capacity, penalties imposed by the Railroad Commission of Louisiana for the violation of its orders, which, by Article 286 of the Constitution of the State of Louisiana, may be recovered by suit brought for the state, and which, when recovered, must be paid into the treasury of that state under the terms of Article 288 of said Constitution.

Fourth. That the United States Circuit Court for the Eastern District of Louisiana is without jurisdiction of and over the matters and things charged and set forth in complainants' bill herein filed, for the reasons aforesaid, in so far as it is sought to restrain, prevent or prohibit the bringing of suit to recover the penalties already imposed by the Railroad Commission of Louisiana previous to the filing of the bill of complaint herein, which would be brought in the name and for the use and benefit of the State of Louisiana as a sovereign state, for the reason that the State of Louisiana cannot be brought into, or be made a party to any proceeding in a Court of the United States, under the terms and provisions of the 11th Amendment to the Constitution of the United States.

135 Fifth. That the suit or suits which the temporary injunction, ordered to be issued herein, will prevent being brought are and would be suits for the collection and recovery of penalties imposed by the Railroad Commission of Louisiana under and by virtue of the provisions of the Constitution of the State of Louisiana of a penal nature, and would be and are suits brought by the State of Louisiana through her Attorney General which it is made his duty to bring, which would enure to its benefit as a state, and the same would be actions or suits in favor of that state to recover money for it as a state in its sovereign capacity, and that, therefore, the Circuit Court of the United States is without jurisdiction to restrain or prevent the same being brought by means of the order of injunction issued herein; and furthermore, because in any such suit so brought for the recovery of the penalties which had been already imposed by

the Railroad Commission of Louisiana previous to the filing of the bill of complaint herein, complainants, defendants therein, would have the right to set up by way of defense the same objections to the legality of the action of the Railroad Commission of Louisiana in imposing penalties so sued for, which are now urged by complainants in their bill of complaint.

Sixth. That complainants are absolutely without right, power or authority to prosecute this suit, for the reason that it is shown in the bill of complaint, and in the amended and supplemental bill of complaint filed herein, that the United States Circuit Court for the Eastern District of Louisiana would be and is, under any circumstances, without jurisdiction and, for that reason, cannot entertain jurisdiction of the same, because the amount involved and the matter in dispute, as set out in the bill of complaint, is not sufficient to give the Circuit Court of the United States jurisdiction herein, as the same does not exceed the sum of two thousand dollars (\$2,000.00) exclusive of interest and costs; the interests of each complainant in said suit being separate, several and distinct, and not exceeding in amount the sum of two thousand dollars, exclusive of interest and costs.

Seventh. That the evidence adduced on the trial of the rule nisi herein showed and shows that the defendant, the Railroad Commission of Louisiana, have the right to enter the orders complained of

136 in the bill of complaint, and that it had already, in the enforcement of same in the exercise of the authority conferred upon it by the Constitution of the State of Louisiana, acted in the matter by entering and imposing penalties for the violation of such orders by complainants, who had not, up to that time, contested or sought to set aside said orders by suit brought in the manner indicated by Article 284 of the Constitution of the State of Louisiana.

Wherefore the said defendants pray that the said decree, granting a temporary injunction, may be reversed, the said injunction dissolved and denied, and that said Circuit Court of the United States for the Eastern District of Louisiana be directed to enter a decree dissolving and vacating the injunction granted by it.

And for all and general relief.

(Signed)

WALTER GUION,  
*Attorney General, Solicitor for  
Defendants and Appellants.*

*Bond.*

Filed Jan. 29, 1906.

T. & P. Ry. Co. et al.

vs.

RAILROAD COMMISSION OF LA.

Know all men by these presents, that we, the Railroad Commission of Louisiana and Walter Guion, Attorney General of

Louisiana, as principals, and George Gerdes, a resident of the City of New Orleans, State of Louisiana, as surety, are held and firmly bound unto the Texas and Pacific Railway Company, the Kansas City Southern Railway Company and the St. Louis, Iron Mountain and Southern Railway Company in the full and just sum of two hundred and fifty dollars to be paid to the said Texas and Pacific Railway Company, the Kansas City Southern Railway Company and the St. Louis Iron Mountain and Southern Railway Company, their certain attorney, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Scaled with our seals and dated this — day of January, in the year of our Lord one thousand nine hundred and six.

137 Whereas, lately at a session of the United States Circuit Court, Fifth Judicial Circuit, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between the Texas and Pacific Railway Company, the Kansas City Southern Railway Company and the St. Louis, Iron Mountain and Southern Railway Company and the Railroad Commission of Louisiana, and Walter Guion, Attorney General of Louisiana, a decree was rendered against the said Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, and the said Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, having obtained an appeal and filed a copy thereof in the clerk's office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Texas and Pacific Railway Company, said Kansas City, Southern Railway Company and said St. Louis, Iron Mountain & Southern Railway Company, citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now the condition of the above obligation is such, that if the said Railroad Commission of Louisiana and said Walter Guion, Attorney General of Louisiana, shall prosecute to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) RAILROAD COMMISSION OF LOU-  
ISIANA,

“ Per C. L. DE FUENTES, *Chairman*, [SEAL.]  
WALTER GUION, [SEAL.]

“ *Attorney General of Louisiana;*  
GEORGE GERDES, [SEAL.]

Sealed and delivered in presence of:

(Signed) JOSEPH DARDIS,  
“ WM. J. DARDIS,  
“ GEO. LAMBERT.

Approved by:  
(Signed)

CHARLES PARLANGE,  
*U. S. Judge.*

UNITED STATES OF AMERICA,

*Eastern District of Louisiana, ss:*

Personally appeared George Gerdes, who being duly sworn,  
 138 deposes and says that he is the surety on the within bond, that  
 he resides in the City of New Orleans, State of Louisiana, and  
 is worth the full sum of two hundred and fifty dollars over and  
 above all his debts and liabilities and property exempt from execu-  
 tion.

(Signed)

GEORGE GERDES.

Subscribed and sworn before me this 29th day of January, 1906.  
 {SEAL.] (Signed) THAD. J. CLARK,

*Not. Pub.**Clerk's Certificate.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District  
 of Louisiana.

CLERK'S OFFICE:

I, Henry J. Carter, Clerk of the Circuit Court of the United States,  
 for the Fifth Circuit and Eastern District of Louisiana, do hereby  
 certify, that the foregoing 82 pages contain and form a full, com-  
 plete, true and perfect transcript of the record and proceedings had,  
 and assignments of error, together with all the evidence adduced on  
 the trial of the rule of complaint for a preliminary injunction in  
 the case of The Texas & Pacific Railway Company, The St. Louis,  
 Iron Mountain and Southern Railway Co. and The Kansas City  
 Southern Railway Company versus The Railroad Commission of  
 Louisiana and Walter Guion, Attorney General of Louisiana, No. 55  
 of the docket of the said Court, Baton Rouge, Division.

{SEAL.]

H. J. CARTER, *Clerk.*

Witness my hand and the seal of said Court, at the City of New  
 Orleans, this 8 day of February, A. D. 1906.

{SEAL.]

H. J. CARTER, *Clerk.*

\* \* \* \* \*

139 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, Clerk of the United States Circuit Court of  
 Appeals for the Fifth Circuit, do hereby certify that the foregoing  
 printed record of 66 pages, in the case of The Railroad Commission  
 of Louisiana et al., Appellants, against The Texas & Pacific Railway  
 Company et al., appellees, numbered 1537, was printed under my  
 supervision, and is identical with the printed records upon which  
 said cause was heard and decided in the said Circuit Court of Appeals.



In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 16th day of June, A. D. 1911.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,

*Clerk of the United States Circuit Court of Appeals.*

140      Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the third Monday in November, A. D. 1911, at New Orleans, Louisiana, before the Honorable Don A. Pardee, the Honorable A. P. McCormick and the Honorable David D. Shelby, Circuit Judges,

Be it remembered that heretofore to-wit: on the 5th day of January, A. D. 1911, a transcript of record, pursuant to an appeal from the Circuit Court of the United States for the Eastern District of Louisiana, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Fifth Circuit, wherein Railroad Commission of Louisiana et al. are appellants and The Texas & Pacific Railway Company et al. are appellees, which said transcript of record was filed and docketed in said Circuit Court of Appeals as No. 2167.

That thereafter the following proceedings were had in said cause in said Circuit Court of Appeals, viz:

141      *Order as to Printing.*

No. 2167.

RAILROAD COMMISSION OF LOUISIANA et al.

vs.

THE TEXAS & PACIFIC RAILWAY COMPANY et al.

JAN. 5, 1911.

It appearing that the printed transcript in No. 1537, Railroad Commission of Louisiana et al. vs. Texas & Pacific Railway Company et al. has been attached to the transcript in this case, by agreement of the parties, and it being deemed unnecessary to print this portion of the record already printed (sufficient copies thereof being now in the office of the clerk of this court) it is ordered that the clerk of this court, in printing the record in the above styled and numbered case, omit from the printing the record in said cause No. 1537, Railroad Commission of Louisiana, et al. vs. Texas & Pacific Railway Company et al. and that the printed copies thereof now on file in this court be used by the court in the consideration of said case, and referred to and made a part of this record as though printed fully and at large therein.

*Argument and Submission.*

No. 2167.

RAILROAD COMMISSION OF LOUISIANA et al.

VS.

TEXAS &amp; PACIFIC RAILWAY COMPANY.

FEBRUARY 21, 1911.

On this day this cause was regularly called, and after argument by E. H. McCaleb, Esq., and Walter Guion, Esq., for appellants, and Bernard J. Mayer, Esq., for appellee, was submitted to the court.

*Opinion.*

U. S. Circuit Court of Appeals. Filed Mar. 21, 1911. Charles H. Lednum, Clerk.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA et al.

V.

TEXAS &amp; PACIFIC RAILWAY COMPANY.

Appeal from the Circuit Court of the United States, Eastern District of Louisiana.

Before Pardee, McCormick, and Shelby, Circuit Judges.

By the COURT:

On the facts found by the master, the court below held that the commerce involved in the case was interstate and decreed accordingly.

After full consideration, we concur in the finding, and the decree appealed from is therefore

Affirmed.

*Final Decree.*

No. 2167.

RAILROAD COMMISSION OF LOUISIANA et al.

VS.

THE TEXAS &amp; PACIFIC RAILWAY COMPANY et al.

MARCH 21, 1911.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Louisiana, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

It is further ordered, adjudged and decreed that the appellants, Railroad Commission of Louisiana, and Walter Guion, Attorney General of Louisiana, and the surety on the appeal bond herein, Daniel Wendling, be condemned, in solido, to pay the costs of this cause in this court, for which execution may be issued out of said Circuit Court.

March 21, 1911.

145 United States Circuit Court of Appeals, Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA et al., Appellants,  
versus

THE TEXAS & PACIFIC RAILWAY COMPANY et al., Appellees.

Appeal from the Circuit Court of the United States for the Eastern  
District of Louisiana.

*Petition for Rehearing.*

U. S. Circuit Court of Appeals. Filed Apr. 6, 1911. Charles H. Lednum, Clerk. Walter Guion, Attorney General of Louisiana. E. Howard McCaleb, Counsel for Petitioners.

146 United States Circuit Court of Appeals, Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA et al., Appellants,  
versus

THE TEXAS & PACIFIC RAILWAY COMPANY et al., Appellees.

Appeal from the Circuit Court of the United States for the Eastern  
District of Louisiana.

*Petition for Rehearing.*

Now come defendants and appellants, and respectfully petition this Honorable Court for a rehearing, for the following reasons, to-wit:

(1) The Court erred in holding that, on the facts found by the Master, that the commerce involved in this case was interstate, because it appears, from the Master's findings and the contract  
147 of carriage, as evidenced by the bills of lading, that the said bills of lading were "to be used only upon shipments having both origin and destination within the State of Louisiana, and must not be used upon interstate shipments."

Said contract constituted an estoppel against the shipper and the complainants railroad companies from claiming that the shipments were for interstate or foreign destination. And the mere intention of the shipper or the consignee to forward the staves from New Orleans to foreign countries cannot alter the intrastate character of the transaction. In holding otherwise, this Court and the lower Court have run counter to the decisions of the Supreme Court of the United States in *Gulf, Colorado & Santa Fe R. R. Co. vs. Texas*, 204 U. S. 412; *Coe vs. Errol*, 116 U. S. 527; *Diamond Match Co. vs. Ontonagon*, 188 U. S. 82; *New York ex rel. vs. Knight*, 192 U. S. 21; *Sabine Tram case*, 121 S. W. 256.

(2) As the Court has adopted the conclusions of the lower Judge, it was error to hold that the twenty days' free time given by the shipper to receive freight for export under the State regulations could change the character of the shipment, because, if the shipment was in fact interstate, it was beyond the power and jurisdiction of the State Railroad Commission to pass any such regulation, but, after the transportation was completed at New Orleans and the bills of lading surrendered to the carriers, the State Railroad Commission had the right, by its regulations, to impose upon the carriers, as forwarders, the performance of some duty or obligation it owed the consignee.

(3) The Court erred in holding, with the lower Judge, that a contract of shipment for local transportation becomes interstate from the fact that the shipper intends, after such local contract of shipment has been completed, to forward the goods to some place outside the State, because such holding conflicts with *Gulf, Colorado & Santa Fe vs. Texas*, 204 U. S. 412, and *Missouri & I. Rd. Tie Co. vs. Cape Gir. & L. Ry. Co.*, 1st I. C. C. Rep., 30; 1st I. C. C. Rep. 607.

(4) The Court erred in holding, with the lower Judge, that, because of the free time granted the shipper or consignee to receive freight for export, constituted a change in the character of the contract for local shipment after said contract was at an end, because no acquiescence on the part of the consignee or shipper could change the contract of shipment or convert the duties of the carrier as a forwarder into that of a carrier.

(5) It being conceded by the findings of the Master and the admissions of fact that there was no evidence of any arrangement, common control or management between the shipper or consignee and the ocean carriers, or between the railroads complainants and the ocean carriers for a continuous carriage or shipment by means of a through bill of lading, or otherwise, from North Louisiana points to points in Europe, Federal jurisdiction, either under the Constitution or under the Act to Regulate Commerce, has not attached, and it was error for the Court, along with the lower Judge, to hold the contrary.

(6) It was error to hold, with the lower Judge, that the Gerdes shipments were interstate, because it appears, and is conceded, that said shipments were delivered by the Texas & Pacific Company to the Texas Terminal Company, which latter acted as the agent and

149 forwarder of Gerdes, and it does not appear that there was any arrangement, common control or management between the Texas & Pacific and the forwarder, Texas Terminal Company, or between any of these and the ocean carriers.

Wherefore, your petitioners pray that an order may be made for a rehearing of the argument of this case, on a day to be appointed by the Court, at such time and upon such points as the Court may direct.

WALTER GUION,  
Attorney General of Louisiana,  
E. HOWARD McCALIB,  
Counsel for Petitioners.

Proper Certificate on Original Copy.

150 *Order Denying Rehearing.*

No. 2167.

RAILROAD COMMISSION OF LOUISIANA et al.

vs.

TEXAS & PACIFIC RAILWAY Co. et al.

APRIL 11, 1911.

Ordered that the petition for rehearing filed in this cause be, and the same is hereby, denied.

151 *Petition and Order of Appeal.*

United States Circuit Court of Appeals for the Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA and WALTER GUION, Attorney General of Louisiana, Appellants,

versus

TEXAS & PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN & Southern Railway Company, & Kansas City Southern Railway Company, Appellees.

The above mentioned appellants, Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, respectfully show, that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Fifth Circuit, and that a judgment has therein been rendered on the 21st day of March, 1911, affirming the decree of the Circuit Court of the United States for the Eastern District of Louisiana, and that the matter in controversy in said suit exceeds one thousand dollars besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Fifth Circuit has not final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellants pray that an appeal be allowed them in the above entitled cause directing the clerk of the United

States Circuit Court of Appeals for the Fifth Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellants, may be reviewed, and if error be found, corrected according to the laws and customs of the United States.

WALTER GUION,

*Attorney General of Louisiana;*

E. HOWARD McCaleb,

*Attorneys for Appellants.*

152 The United States Circuit Court of Appeals for the Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA and WALTER GUION, Attorney General of Louisiana, Appellants,  
versus

TEXAS & PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN & Southern Railway Company, and Kansas City Southern Railway Company, Appellees.

An assignment of errors having been duly presented with the foregoing petition, It is hereby ordered that the appeal in the above entitled case to the Supreme Court of the United States be and is hereby allowed as prayed.

DAVID D. SHELBY,

*United States Circuit Judge, Fifth Circuit.*

The foregoing has the following endorsements, to-wit: No. 2167. United States Circuit Court of Appeals, Fifth Circuit. Railroad Commission of Louisiana and Walter Guion Attorney General of Louisiana Appellants, vs. Texas & Pacific Railway Company, St. Louis, Iron Mountain and Southern Railway Company and Kansas City Southern Railway Company, Appellees. Petition and order of appeal. U. S. Circuit Court of Appeals. Filed Jun- 5 1911, Charles H. Lednum, Clerk.

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*Assignment of Errors.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA and WALTER GUION, Attorney General of Louisiana, Appellants,  
vs.

THE TEXAS & PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN & Southern Railway Company, Kansas City Southern Railway Company, Appellees.

*Assignment of Errors.*

The appellants in the above entitled cause, in connection with their petition for appeal herein, present and file therewith their as-

signment of errors, as to which matters and things they say that in the record, decrees and proceedings herein there is manifest error and that the United States Circuit Court of Appeals, Fifth Circuit, erred in this, to-wit:

First. That the bill of complaint filed in this cause does not state a case which entitles, or would entitle, the complainants to the writ of injunction, and it, therefore, should not be issued.

Second. That the writ of injunction should not have been granted to stay proceedings in the State Courts of the State of Louisiana, as the issuance of same would be, and is in direct violation of Section 720 of the Revised Statutes of the United States.

Third. That this Honorable Court and the United States Circuit Court, Eastern District of Louisiana, is without jurisdiction to restrain or prevent, by injunction, the institution of a suit, or of several suits, if separately brought against complainants in the State Courts of the State of Louisiana, to recover penalties imposed upon complainants by the Railroad Commission of Louisiana for the violation of its orders, because such suit or suits, when brought, would be suits brought against complainants by the State of Louisiana in her sovereign capacity and character, under Article 286 of the

154 Constitution of the State of Louisiana, and because such restraining order or order of injunction preventing or prohibiting the institution of such suit or suits against complainants, would be, in effect, and operate as an order of injunction against the State of Louisiana, and would have the effect of preventing the State of Louisiana, by injunction from recovering in a State Court of that State, in a suit or suits which it is made the duty of the Attorney General of that State to bring in his official capacity, penalties imposed by the Railroad Commission of Louisiana for the violation of its orders, which, by Article 286 of the Constitution of the State of Louisiana, and which, when recovered, must be paid into the treasury of that State under the terms of Article 288 of said Constitution.

Fourth. That the United States Circuit Court for the Eastern District of Louisiana and this Court are without jurisdiction of and over the matters and things charged and set forth in complainants' bill herein filed, for the reasons aforesaid, in so far as it is sought to restrain, prevent or prohibit the bringing of suit to recover the penalties already imposed by the Railroad Commission of Louisiana previous to the filing of the bill of complaint herein, which would be brought in the name and for the use and benefit of the State of Louisiana as a sovereign State, for the reason that the State of Louisiana can not be brought into, or be made a party to any proceeding in a court of the United States, under the terms and provisions of the eleventh amendment to the Constitution of the United States.

Fifth. That the suit or suits which the injunction issued herein, will prevent being brought are and would be suits for the collection and recovery of penalties imposed by the Railroad Commission of Louisiana, under and by virtue of the provisions of the Constitution of the State of Louisiana of a penal nature, and would be and are suits brought by the State of Louisiana through her Attorney General, which it is made his duty to bring, which would enure  
155 to its benefit as a State, and the same would be actions or suits in favor of that State to recover money for it as a State



in its sovereign capacity, and that, therefore, the Circuit Court of the United States is without jurisdiction to restrain or prevent the same being brought by means of the order of injunction issued herein; and, furthermore, because in any such suit so brought for the recovery of the penalties which had been already imposed by the Railroad Commission of Louisiana previous to the filing of the bill of complaint herein, complainants, defendants therein, would have the right to set up by way of defense the same objections to the legality of the action of the Railroad Commission of Louisiana in imposing penalties so sued for, which are urged by complainants in their bill of complaint.

Sixth. That complainants are absolutely without right, power or authority to prosecute this suit, for the reason that it is shown in the bill of complaint, and in the amended and supplemental bill of complaint filed herein, that the United States Circuit Court for the Eastern District of Louisiana and this Court would be and are, under any circumstances, without jurisdiction, and, for that reason, cannot entertain jurisdiction of the same, because the amount involved and the matter in dispute, as set out in the bill of complaint, is not sufficient to give the Circuit Court of the United States jurisdiction herein, as the same does not exceed the sum of Two Thousand Dollars (\$2,000.00) exclusive of interest and costs; the interests of each complainant in said suit being separate, several and distinct, and not exceeding in amount the sum of two thousand dollars, exclusive of interest and costs.

Seventh. That the evidence adduced herein showed and shows that the defendant, the Railroad Commission of Louisiana, *have* the right to enter the orders complained of in the bill of complaint, and that it had already in the enforcement of same in the exercise of the authority conferred upon it by the Constitution of the State of Louisiana, acted in the matter by entering and imposing penalties for the violation of such orders by complainants, who had not, up to that time, contested or sought to set aside said orders by suit brought in the manner indicated by Article 284 of the Constitution of the State of Louisiana.

And the Court further erred:

First. In holding and decreeing that on the facts found by the Master that the commerce involved was interstate.

Second. In holding that the shipments referred to in the original and supplemental bill of complaint and in the evidence of the case, were not intrastate shipments or that the Railroad Commission of Louisiana had no jurisdiction or authority over them, or that said Railroad Commission of Louisiana had no power to impose the fines in violation of its orders.

Third. In holding that the intention of the shipper to ship the logs, staves, headings, etc., before and after their arrival in New Orleans, from New Orleans to foreign ports or that they were in fact exported, is controlling as against the authority and laws of the State of Louisiana and of the Railroad Commission of Louisiana over persons and property in the absence of any evidence of a common control, management or arrangement for a continuous carriage or shipment between complainants and any other common carrier, or

between the shipper and complainants and the ocean carriers from north and west Louisiana points to foreign ports via New Orleans.

Fourth. In holding as against the Constitution of the United States and against Clause 3, of Section 8 of Article 1 of said Constitution, and against the Act of Congress to regulate Commerce, as amended June 29th, 1906, and April 13th, 1908, under the admitted facts, that there was no common control, management or arrangement directly or indirectly for a continuous carriage or shipment between complainants or any other common carrier to transport the property from any point within to any point without the state.

Fifth. In failing and refusing to hold that the Railroad  
157 Commission of Louisiana had jurisdiction over said shipments, or that the intention of the shipper could not take it away; and that the said Commission had authority to impose fines upon complainants for violation of its orders, and that the contract of shipment was complete upon delivery to consignees of the property in New Orleans; and that the agency of complainants as forwarders for said shippers could not change the completed contract of shipment; and that the intention of shipper or consignee could not convert the contract for local shipment into a contract for interstate or foreign shipment.

Sixth. In failing and refusing to follow the decision of the Supreme Court of the United States, *Gulf, Colorado & Santa Fe Railway Co. vs. Texas*, 204 U. S. 412, and other cases of equal application, and in failing to overrule the exceptions to the master's report and rendering a final decree in favor of defendants dismissing the original and amended bills of complaint and dissolving the writ of injunction herein issued.

Wherefore, the said appellants pray the Honorable Court to examine and correct the errors assigned and for a reversal of the judgments and decrees of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above entitled case.

WALTER GUION,

*Attorney General of Louisiana;*

E. HOWARD McCALIB,

*Attorneys for Appellants.*

The foregoing has the following endorsements, to-wit:

No. 2167. United States Circuit Court of Appeals, Fifth Circuit. Railroad Commission of Louisiana and Walter Guion Attorney General of Louisiana, Appellants, vs. Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and Kansas City Southern Railway Company, Appellees. Assignment of Errors. U. S. Circuit Court of Appeals. Filed Jun- 5, 1911. Charles H. Lednum, Clerk.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA and WALTER GUION, Attorney  
General of Louisiana, Appellants,  
versusTEXAS & PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN  
& Southern Railway Company, and Kansas City Southern Railway  
Company, Appellees.

Know all men by these presents, That we, the Railroad Commission of Louisiana, and Walter Guion, Attorney General of Louisiana, as principals, and E. H. McCaleb, as surety, are held and firmly bound unto the Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and Kansas City Southern Railway Company, in the sum of Five Hundred Dollars (\$500.00) to be paid to the said Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company and Kansas City Southern Railway, which payment, well and truly to be made, we bind ourselves and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 2nd day of June, A. D. 1911.

Whereas, the appellants in the above entitled suit have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered and entered in said cause in the Circuit Court of Appeals for the Fifth Circuit on the 21st day of March, 1911.

Now, Therefore, the condition of this obligation is such that if the said appellants shall prosecute said appeal to effect, and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise to remain in full force and virtue.

THE RAILROAD COMMISSION OF LOUISIANA,

Per J. J. MEREDITH, *Chairman.*

WALTER GUION,

*Attorney General of Louisiana.*

E. H. MCCALED.

159 E. H. McCaleb, surety named in the foregoing bond, being first duly sworn, says:

That he is a resident and freeholder in the Parish of Orleans, State of Louisiana, and is worth the sum of Five Hundred Dollars (\$500.00) over and above all his just debts and liabilities, exclusive of property exempt from execution.

E. H. MCCALED.

Subscribed and sworn to before me, this 2nd day of June, A. D. 1911.

[SEAL.]

ARTHUR B. LEOPOLD,  
*Notary Public.*

The foregoing bond is approved this 2nd day of June, A. D. 1911.

DAVID D. SHELBY,  
*United States Circuit Judge, Fifth Circuit.*

The foregoing has the following endorsements, to-wit:

No. 2167. United States Circuit Court of Appeals for the Fifth Circuit. No. 2167. Railroad Commission of Louisiana, and Walter Guion, Attorney General of Louisiana, Appellants, vs. Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company and Kansas City Southern Railway Company, Appellees. Bond of Appeal. U. S. Circuit Court of Appeals. Filed Jun- 5, 1911, Charles H. Lednum, Clerk.

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Number 2167.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA,  
*Fifth Circuit:*

To the Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and the Kansas City Southern Railway Company:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, in the District of Columbia, thirty days after the date of this citation, pursuant to an appeal allowed and filed in the Clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, wherein the Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable David D. Shelby, Judge of the United States Circuit Court of Appeals for the Fifth Circuit, this the 2nd day of June, 1911.

DAVID D. SHELBY,  
*United States Circuit Judge.*

161 [Endorsed:] No. 2167. United States Circuit Court of

Appeals, Fifth Circuit. Railroad Commission of Louisiana and Walter Guion, Attorney General of Louisiana, Appellants, vs. Texas & Pacific Railway Company, St. Louis, Iron Mountain and Southern Railway Company, and Kansas City Southern Railway Company, Appellees. Citation of Appeal. U. S. Circuit Court of Appeals. Filed Jun- 5, 1911. Charles H. Lednum, Clerk.

*Waivers of Citation.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA and WALTER GUION, Attorney  
General of Louisiana, Appellants,

vs.

TEXAS & PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN  
& Southern Railway Company, Kansas City Southern Railway  
Company, Appellees.

*Waiver of Citation of Appeal.*

An appeal having been taken by the appellants to the Supreme Court of the United States in the above entitled and numbered cause, returnable within thirty days from June 2nd 1911, the undersigned solicitors and counsel for Appellee Texas & Pacific Railway Company hereby waives citation of appeal and service of citation of appeal.

HOWE, FENNER, SPENCER & COCKE,  
B. J. MAYER,

*Solicitors and Counsel for Texas & Pacific  
Railway Company, Appellee.*

[Endorsed:] No. 2167. Railroad Commission of La. et al. vs. Texas & Pacific Ry. Co. et al. Waiver of Citation &c. U. S. Circuit Court of Appeals. Filed Jun- 15, 1911. Charles H. Lednum, Clerk.

163 United States Circuit Court of Appeals, Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA and WALTER GUION, Attorney  
General of Louisiana, Appellants,

vs.

TEXAS & PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN  
& Southern Railway Company, Kansas City Southern Railway  
Company Appellees.

*Waiver of Citation of Appeal.*

An appeal having been taken by the appellants to the Supreme Court of the United States in the above entitled and numbered cause, returnable within thirty days from June 2nd 1911, the undersigned solicitors and counsel for Appellee Kansas City Southern Railway Co. hereby waives citation of appeal and service of citation of appeal.

ALEXANDER & WILKINSON,

*Solicitors and Counsel for Kansas City South-  
ern Railway Company, Appellee.*

[Endorsed:] No. 2167. Railroad Commission of La. et al. vs. Texas & Pacific Ry. Co. et al. Waiver of citation &c. U. S. Circuit Court of Appeals. Filed Jun- 15, 1911. Charles H. Lednum, Clerk.

164 United States Circuit Court of Appeals, Fifth Circuit.

No. 2167.

RAILROAD COMMISSION OF LOUISIANA and WALTER GUION, Attorney  
General of Louisiana, Appellants,

vs.

TEXAS & PACIFIC RAILWAY COMPANY, ST. LOUIS, IRON MOUNTAIN  
& Southern Railway Company, Kansas City Southern Railway  
Company Appellees.

*Waiver of Citation of Appeal.*

An appeal having been taken by the appellants to the Supreme Court of the United States in the above entitled and numbered cause, returnable within thirty days from June 2nd, 1911, the undersigned solicitors and counsel for appellee, St. Louis, Iron Mountain and Southern Railway Company hereby waives citation of appeal and service of citation of appeal.

HUDSON, POTTS & BERNSTEIN,

*Solicitors and Counsel for St. Louis, Iron Mountain &  
Southern Railway Company, Appellee.*

[Endorsed:] No. 2167. Railroad Commission of La. et al. vs. Texas & Pacific Ry. Co. et al. Waiver of citation &c. U. S. Circuit Court of Appeals. Filed Jun- 15, 1911. Charles H. Lednum, Clerk.

165 I, Charles H. Lednum, Clerk of the United States Circuit

Court of Appeals for the Fifth Circuit, do hereby certify that the 23 pages next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings and the assignment of errors, including the opinion of the Court (except the transcripts of the records from the Circuit Court of the United States for the Eastern District of Louisiana) in a certain cause in said court, numbered 2167, wherein Railroad Commission of Louisiana et al. are appellants, and the Texas & Pacific Railway Company et al. are appellees, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 16th day of June A. D. 1911.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

[SEAL.]

CHARLES H. LEDNUM,

*Clerk of the United States Circuit Court of Appeals.*

Endorsed on cover: File No. 22,744. U. S. Circuit Court Appeals, 5th Circuit. Term No. 668. Railroad Commission of Louisiana and Walter Guion, attorney general of Louisiana, appellants, vs. Texas & Pacific Railway Company, St. Louis, Iron Mountain & Southern Railway Company, and Kansas City Southern Railway Company. Filed June 20th, 1911. File No. 22,744.



**Supreme Court of the United States**

October Term, 1912.

No. 335.

**FIL. 311.**

**MAY 8 1913**

**JAMES H. McKENNEY**

**RAILROAD COMMISSION OF LOUISIANA AND  
WALTER GUION, ATTORNEY GENERAL OF  
LOUISIANA, APPELLANTS.**

**VERSUS**

**TEXAS AND PACIFIC RAILWAY COMPANY, ST.  
LOUIS, IRON MOUNTAIN AND SOUTHERN  
RAILWAY COMPANY, AND KANSAS CITY  
SOUTHERN RAILWAY COMPANY.**

**Appeal from the United States Circuit Court of Appeals  
for the Fifth Circuit.**

**Brief on Behalf of the Texas and Pacific Railway  
Company and the St. Louis, Iron Mountain and  
Southern Railway Company, Appellees.**

**WALKER B. SPENCER,  
CHARLES PAYNE FENNER,  
PHILIP S. GIDIERE,  
ERMONDS PHELPS,**

**Attorneys for Texas and Pacific Railroad  
Company.**

**HENRY BERNSTEIN,  
JOHN TOTTS,  
F. G. HUDSON,**

**Attorneys for St. Louis, Iron Mountain  
and Southern Railroad Company.**



# **Supreme Court of the United States**

**October Term, 1912.**

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**No. 335.**

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**RAILROAD COMMISSION OF LOUISIANA AND  
WALTER GUION, ATTORNEY GENERAL OF  
LOUISIANA, APPELLANTS.**

**versus**

**TEXAS AND PACIFIC RAILWAY COMPANY, ST.  
LOUIS, IRON MOUNTAIN AND SOUTHERN  
RAILWAY COMPANY, AND KANSAS CITY  
SOUTHERN RAILWAY COMPANY.**

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**Appeal from the United States Circuit Court of Appeals  
for the Fifth Circuit.**

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**Brief on Behalf of the Texas and Pacific Railway  
Company and the St. Louis, Iron Mountain and  
Southern Railway Company, Appellees.**

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## **STATEMENT OF THE CASE.**

On December 4th, 1905, the appellees, complainants below, filed their bill in equity against the Railroad Com-

mission of Louisiana, seeking to enjoin the enforcement of certain orders made by the Railroad Commission and the collection of fines imposed on them for disobedience of its orders by the Railroad Commission.

The bill (R., pp. 57 to 65) recites that on May 25th, 1905, the Railroad Commission of Louisiana (hereafter called the Commission for the sake of convenience and brevity) promulgated and put into effect an order designated as No. 445, fixing rates on logs, lumber and staves, between points in Louisiana on the St. Louis, Iron Mountain and Southern Railway Company, and the City of New Orleans, at ten cents per hundred pounds, with 30,000 pounds as a minimum carload.

That the Texas and Pacific Railway Company and the St. Louis, Iron Mountain and Southern Railway Company had published and filed with the Interstate Commerce Commission a rate of twelve cents per pound on the same commodities, between points in Louisiana and New Orleans for all shipments intended for export.

That during the months of July, August, September and October of 1905, certain shippers delivered to the St. Louis, Iron Mountain and Southern Railway Company at certain stations on its lines, eighteen cars of staves and logs consigned to shipper's own order, notify Elms & Durselen at New Orleans. That these staves were intended and destined by the shippers to be exported to foreign countries from the Port of New Orleans and were accepted for carriage upon a rate of twelve cents per hundred pounds, the rate prescribed for shipments of this class by the published tariff filed with the Interstate Commerce Commission.

That thereafter, upon arrival at New Orleans, the Texas and Pacific Railway Company notified Elms & Durselen of the arrival, who, in turn notified the railroad to deliver the staves direct to certain steamships plying between the Port of New Orleans and foreign ports, and that same were so delivered and loaded upon the designated steamships and transported abroad as always intended by the shippers; that such transaction constituted one continuous carriage and was interstate, or export, and that the rate of twelve cents was applied thereto.

That on October 10th, 1905, Elms & Durselen filed a complaint with the Railroad Commission of Louisiana, claiming that the shipments were local shipments and that the rate of ten cents should apply.

That the said Railroad Commission, upon a hearing of this complaint, sustained the same and found and held that its order No. 445 fixing the rate at ten cents had been violated and fined the complainants \$2000.00 each as a penalty for such violation.

The Commission filed a demurrer to the bill. This was overruled and a preliminary injunction was issued on January 25th, 1906; an appeal from that order was taken to the Circuit Court of Appeals for the Fifth Circuit and the judgment of the lower Court was affirmed. (R., pp. 3 and 4).

Thereupon the Commission answered, putting at issue all of the material averments of the bill of complaint, and especially contending that the shipments were intrastate and local and, therefore, were within its jurisdiction and that it had authority to make the orders complained of. William Grant, Esq., was appointed special master to find the facts and he filed his report on August

12th, 1910, in which he recommended the dismissal of the complainants' bill. (R., pp. 14 to 18). To this report the complainants filed exceptions, not as to the findings of facts, but as to the conclusions of law reached by the master. (R., p. 40 and 41). After hearing these exceptions, the Court rendered judgment sustaining the exceptions, and disapproving the report and ordered that the preliminary injunction theretofore issued be made perpetual and that the orders of the Railroad Commission be held illegal, null and void insofar as construed by said Railroad Commission to be applicable to logs, staves and lumber destined for and being the subject of foreign and interstate commerce. (R., pp. 47 and 48). On appeal to the Circuit Court of Appeals for the Fifth Circuit that judgment was affirmed (R., pp. 112 and 113) and the Railroad Commission prosecutes this appeal.

### **STATEMENT OF FACTS.**

The following findings of facts were made by the master and are admitted by all parties to be correct: (R., pp. 14 and 18)

1. "That the complainant, the Texas and Pacific Railway Company, is a railway corporation created under the laws of the United States, and has been in existence and operation between El Paso, Texas, and New Orleans, Louisiana, as a common carrier of freight and passengers, under its charter, continuously since 1884-5, to the present time.

2. "That the complainant, the St. Louis, Iron Mountain and Southern Railway Company, is a consolidated railway corporation created under the laws of the States of Arkansas and Missouri, with its legal domicile in the City of St. Louis, State of Missouri, and has owned and operated, since 1892, a line of standard gauge steam railroads, as a common carrier of freight and passengers, from points in said State to Alexandria, in the State of Louisiana.

3. "That the Kansas City Southern Railway Company owns and, since 1904, has operated a line of standard gauge steam railroads from the City of Kansas City, in the State of Missouri, through the State of Louisiana, as a common carrier of freight and passengers, with its legal domicile in the said City of Kansas, State of Missouri.

4. "That all of said railroad companies, in the years 1904 and 1905, were engaged in interstate and intrastate commerce, transporting freight from points within and without the State of Louisiana, to the City of New Orleans, which are subsequently loaded on board ships and transported to foreign parts and countries.

5. "That the defendant, the Railroad Commission of Louisiana, was created by Articles 283 to 289, inclusive, of the Constitution of Louisiana, adopted in the year 1898, and the amendments thereto.

6. "That the lines of railroad of the Texas and Pacific Railway Company and of the Kansas City Southern Railway Company connect at Shreveport, Louisiana; and that those of the Texas and Pacific Railway Company and of the St. Louis, Iron Mountain and Southern Railway Company connect at Alexandria, Louisiana.



7. "That the Railroad Commission of Louisiana, on May 25th, 1905, promulgated and put in effect its Order No. 445, a copy of which is annexed to complainant's bill, marked Exhibit "A," which fixed the freight rates that said railroads were entitled to charge on all intrastate traffic, and that said rates were effective and in force at the date of the shipments in controversy in this cause.

8. "That in the months of July, August, September and October, 1905, the Urania Lumber Company, L. M. Jones, Bradford Bros., J. T. Adams and H. T. Bradford delivered to the said St. Louis, Iron Mountain and Southern Railway Company, at Olla, Georgetown, and Kelly stations, on its line of railroad within the State of Louisiana, eighteen (18) carloads of staves and poplar logs, consigned to Charles S. Elms and Hub Durselen, at New Orleans (see Exhibit "B" annexed to complainant's bill); that said eighteen carloads of logs and staves were transported by said receiving carrier from said initial stations on its line to Alexandria, and there delivered to its connecting carrier, the Texas and Pacific Railway Company which transported the same to the City of New Orleans, where the logs and staves were unloaded from the cars on board ship and exported to foreign countries.

9. "That when said shipments were made, the legal tariff filed with and approved by the Railroad Commission of Louisiana on intrastate shipments of lumber, logs and staves from points on the St. Louis, Iron Mountain and Southern Railway in Louisiana to the City of New Orleans, was ten cents per hundred pounds; and that the legal tariff filed with and approved by the Interstate Commerce Commission on such shipments at that time was twelve cents per hundred pounds.



10. "That upon the arrival of said eighteen (18) cars at New Orleans, the Texas and Pacific Railway Company notified the consignees, Charles S. Elms and Hub Durselen in the usual and customary manner, and that said consignees ordered the Texas and Pacific Railway Company to deliver the freight to certain steamships plying between New Orleans and European ports; that said freights were so delivered as ordered and were received on board said steamships and exported from the State of Louisiana; and that a freight rate of twelve cents per hundred pounds was charged on said shipments and collected by the Texas and Pacific Railway Company.

11. "That in March, 1905, Friedlander & Oliver delivered to the complainant, Kansas City Southern Railway Company, at Leesville, Louisiana, on its line of railroad, three carloads of tank staves which had been loaded into Cars Nos. 7035, 7036 and 6451 of the Texas and Pacific Railway Company to be transported to George Gerdes, consignee, at New Orleans.

"The rate on these staves from the initial point of New Orleans, as established by the Railroad Commission of Louisiana, was at the time ten cents per hundred pounds; and the interstate rate fixed by the tariff sheet filed with and approved by the Interstate Commerce Commission, for such shipments, was fifteen cents per hundred pounds.

12. "That said three carloads of staves were transported by the Kansas City Southern Railway Company from Leesville to Shreveport, Louisiana, and there delivered to its connecting carrier, the Texas and Pacific Railway Company, which handled the same to the City of New Orleans.

"That on arrival of the cars the customary

notice was given to consignee, and, thereupon, the consignee in the month of April, 1905, directed said railroad to deliver the freight to Steamship 'West Point,' at its Westwego terminal wharf, but the steamship having removed to the city front, the cars were delivered to the Illinois Central Railroad Company, which, in turn, switched them to the wharf, where the staves were at last loaded on said steamship and transported to Hamburg, Germany. The Texas and Pacific Railway Company collected freight charges thereon from the consignee, at the rate of fifteen cents per hundred pounds.

13. "That the said George Gerdes, at the date of the shipment of said carloads of staves, resided in the City of New Orleans, where he was engaged as a ship broker in negotiating for cargo space, rates and attending to shipments for consignors in the United States; and that the said Charles S. Elms and Hub Durselen, consignees of said eighteen (18) carloads, were engaged at New Orleans in the business of exporting staves to foreign countries, and that the staves which they dealt in, are not treated, manufactured or changed from the original shape in which they are received at New Orleans for export, and that 98 per cent of the shipments by them at New Orleans are exported to foreign countries.

14. "That the eighteen (18) cars referred to in Exhibit 'B' attached to complainant's bill, and the three carloads consigned to George Gerdes, arrived at New Orleans and were delivered aboard ship for export on the dates following:

"Car 11,575 M. P., arrived July 25th, 1905, and delivered to ship July 27th, 1905.

"Car 2029 I. M., arrived August 1, 1909, and delivered to ship August 14, 1905.

"Car 23,167 M. P., arrived August 1, 1905, and delivered to ship August 14, 1905.

"Car 23,081 M. P., arrived August 1, 1905, and transferred to New Orleans for belting for delivery to ship, August 7, 1905.

"Car 526 M. P., arrived August 9, 1905, delivered to Steamship Colonian, August 25, 1905.

"Car 26,721 M. P., arrived October 7, 1905, delivered to Ship Asian, October 18, 1905.

"Car 937 M. P., arrived October 7, 1905, and delivered to Ship Asian, October 18, 1905.

"Car 2580 M. P., arrived October 7, 1905, and delivered to Ship Louisianian, November 2, 1905.

"Car 33,479 M. P., arrived October 7, 1905, and delivered to Ship Asian, October 18, 1905.

"Car 66,068 S. P., arrived October 8, 1905, and delivered to Ship Asian, October 18, 1905.

"Car 5560 T. P., arrived October 8, 1905, and delivered to Steamship Belgian, October 30, 1905.

"Car 84,852 C. P., arrived October 8, 1905, and delivered to Steamship Asian, October 18, 1905.

"Car 6966 T. P., arrived October 8, 1905, and delivered to Steamship Belgian, October 30, 1905.

"Car I. M., arrived October 10, 1905, and delivered to Steamship Louisiana, November 2, 1905.

"Car 14,021 I. M., and

"Car 12,070, I. M., and

"Car 38,325, S. P., arrived here August 1, 1905, ordered to ship's side and unloaded August 7, 1905.

"Car 10,749, I. M., arrived here August 9, 1905, and delivered to ship on October 25, 1905.

"Car 7,036 T. P., arrived March 30, 1905, ordered transferred to city front and delivered to Steamship West Point, April 4th, 1905.

"Car 6,450 T. P., same dates.

"Car 7,036 T. P., same dates.

“That at the time these shipments were made in 1905, the rules of the Railroad Commission of Louisiana allowed four days free time for unloading cars after arrival at New Orleans and notification to the consignee, except where the consignments were for export, in which case twenty days were allowed. That no demurrage was tendered by the shipper or consignee or received by the carrier on account of the delays in unloading beyond the four days allowed by said rules. That every one of said shipments paid to the carrier  $3/4$  of a cent per 100 pounds for unloading charges, this being the same amount charged on all export shipments. That from the time the shipments herein involved moved from the initial points in Louisiana, under the bills of lading they were in the physical custody of the railroad company until arrival at New Orleans, and that, thereafter, they were in the physical custody of the steamships which issued export bills of lading therefor to the shippers of the cargo.

15. “That the bill of lading marked T. & P. 5560 and the bill marked I. M. 12070 annexed hereto are samples of the bills of lading on all the shipments made by the St. Louis, Iron Mountain & Southern Railway Company, involved in this case; and I find from the evidence that the bills of lading issued at Leesville by the Kansas City Southern Railway Company for the three carloads of staves consigned to George Gerdes, were substantially in the same form, but that each was endorsed on the back by the station agent with the words, ‘For Export’ and were accepted in that form by the shipper.

“That said bills of lading in each instance provided for the delivery of the freight from the initial points of shipment to the City of New Orleans,

there to be delivered to shipper or consignee's order.

16. "That although the bills of lading issued for all of said cars required the carrier to deliver the freight from the initial points of shipments to the City of New Orleans, within the limits of the State of Louisiana, the staves and logs were intended by the shippers to be exported to foreign countries, and were treated by both the shippers and the carrier accordingly, the shippers always holding the cars on the railroad track until they could accumulate cargo to fill their export contracts, and arrange for transportation, and the railroad company allowing the shippers the usual twenty days' time for delivery, as in case of export shipments, without charging demurrage, which the carrier would have had a right to collect after the expiration of four days, if the shipments had been considered and treated as purely intrastate."

### **ARGUMENT.**

The sole question in this case is whether or not these shipments were intrastate shipments or interstate shipments. If intra-state shipments, then the rate as filed by the Railroad Commission of Louisiana of ten cents per hundred pounds should apply and the railroads violated this rate, and the Commission had jurisdiction to fine the railroads for such violation; if interstate shipments, then the rate of twelve cents per hundred pounds, as established by the published tariffs filed with the Interstate Commerce Commission should apply and the Louisiana Commission was

wholly without jurisdiction over the shipments or rates, was wholly without authority to entertain any complaint in regard thereto and to impose any fines in connection therewith.

The finding of facts insofar as determinative of the character of these shipments may be summarized as follows:

1st. "That the said Charles S. Elms and Hub Durselen, consignees, of said eighteen carloads were engaged at New Orleans in the business of exporting staves to foreign countries and that the staves which they dealt in are not treated, manufactured or changed from the original shape in which they are received at New Orleans for export.

2nd. "That 98 per cent of the shipments made by them at New Orleans are exported to foreign countries.

3rd. "That the bills of lading covering these shipments provided for delivery of the freight from the initial points of shipment to the city of New Orleans, there to be delivered to shippers' or consignees' order.

4th. "That although the bills of lading issued for all of said cars required the carrier to deliver the freight from the initial points of shipments to the City of New Orleans within the limits of the State of Louisiana, the staves and logs were intended by the shippers, to be exported to foreign countries, and were treated by both the shippers and the carrier accordingly, the shippers always holding the cars on the railroad track until they could accumulate cargo to fill their ex-

port contracts and arrange for transportation, and the railroad company allowing the shippers the usual twenty days' time for delivery, as in cases of export shipments, without charging demurrage, which the carrier would have had the right to collect after the expiration of four days if the shipments had been considered and treated as purely intra-state."

5th. "That from the time the shipments involved moved from the initial points in Louisiana under the bills of lading, they were in the physical custody of the railroad company until arrival at New Orleans, and that thereafter, they were in the physical custody of the steamships which issued export bills of lading therefor to the shippers of the cargo."

We think that, in view of the recent decisions of this Court, there can be no question but that the shipments involved were interstate shipments and that the rate fixed by the Railroad Commission of Louisiana was therefore, inapplicable thereto.

**In Southern Pacific Railroad Company v. Interstate Commission, 219 U. S., 498, the Court held that**

"Goods actually destined for export are necessarily in interstate, as well as in foreign, commerce, when they actually start in the course of transportation to another State or are delivered to a carrier for transportation, **Coe v. Erroll, 116 U. S., 577**; this is the same whether the goods are shipped on through bills of lading or on an initial bill only to the terminal within the same State where they are to be delivered to a carrier for foreign destination".

In **Ohio Railroad Commission v. Worthington**, 225 U. S. 101, it appeared that the Railroad Commission of Ohio had imposed a rate of 70 cents a ton on what was called "Lake-cargo coal" from a coal field in eastern Ohio to the ports of Huron and Cleveland, Ohio, on Lake Erie, for carriage thence by lake vessels. The shipper transported the coal ordinarily on bills of lading to himself or to another for himself at Huron, and it appeared that the coal might be accumulated in large quantities at Huron, and only taken out of the accumulated lots from time to time for the purpose of shipment out of the State. The rate of 70 cents however, covered not only the transportation of the coal to Huron, but placing it on the vessels and trimming it for its interstate journey. The Court held that the transportation to Huron was an interstate carriage and, therefore, that the rate fixed by the Ohio Railroad Commission was null and void under the commerce clause of the Constitution as an attempt to regulate interstate commerce.

In **Texas & New Orleans Railroad Company v. Sabine Tram Company**, 227 U. S., 111, the Court held that

"Lumber ordered manufactured and shipped for export through a port where there is no local trade is foreign and not intrastate commerce, although shipped on local bills of lading from a point in Texas to Sabine, Texas, and there shipped to its final destination by a vessel not designated before arrival and after waiting the full time allowed on the wharves before shipment."

The Court said (page 126):

"The determining circumstance is that the shipment of the lumber to Sabine was but a step



in its transportation to its real and ultimate destination in foreign countries. In other words, the essential character of the commerce, not its mere accident, should determine. It was to supply the demand of foreign countries that the lumber was purchased, manufactured and shipped, and to give it a various character by the steps in its transportation would be extremely artificial. Once admit the principle and means will be afforded of evading the national control of foreign commerce from points in the interior of the State. There must be transshipment at the seaboard, and if that may be made the point of ultimate destination by the device of separate bills of lading the commerce will be given local character, though it be essentially foreign."

We submit that the undisputed facts in this case bring it within the doctrine of the above cases and that the judgment should, therefore, be affirmed at the cost of appellant. And we so pray.

Respectfully submitted,

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U. S. Supreme Court, U. S.  
FILED.

APR 30 1913

JAMES H. MCKENNEY,  
CLERK.

# Supreme Court of the United States

OCTOBER TERM, 1912.

No. 335.

RAILROAD COMMISSION OF LOUISIANA AND  
WALTER GUION, ATTORNEY GENERAL  
OF LOUISIANA,  
APPELLANTS.

VS.

TEXAS AND PACIFIC RAILWAY COMPANY,  
ST. LOUIS, IRON MOUNTAIN AND SOUTHERN  
RAILWAY COMPANY AND  
KANSAS CITY SOUTHERN RAILWAY COMPANY.

*Appeal from the United States Circuit Court of Appeals  
for the Fifth Circuit.*

BRIEF ON BEHALF OF APPELLANTS.

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Attorney General of Louisiana.  
WYLLIE M. BARROW,

Assistant Attorney General for Appellant.

E. HOWARD MCCALLEN,

Of Counsel.



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# Supreme Court of the United States

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OCTOBER TERM, 1912.

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No. ———

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RAILROAD COMMISSION OF LOUISIANA AND  
WALTER GUION, ATTORNEY GENERAL  
OF LOUISIANA,  
APPELLANTS.

vs.

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ST. LOUIS, IRON MOUNTAIN AND SOUTHERN  
RAILWAY COMPANY AND  
KANSAS CITY SOUTHERN RAILWAY COMPANY.

---

*Appeal from the United States Circuit Court of Appeals  
for the Fifth Circuit.*

---

BRIEF ON BEHALF OF APPELLANTS.

---

## STATEMENT OF THE CASE.

Plaintiffs and appellees, Texas and Pacific Railway Company, St. Louis, Iron Mountain and Southern Railway and Kansas City Southern Railway Company, filed their bill in equity seeking to enjoin the Railroad Commission of Louisiana, defendant and appellant, from enforcing payment of fines aggregating \$8000, imposed

upon plaintiffs for violating the Commission's orders, in that plaintiffs charged and collected fifteen cents per one hundred pounds on certain stave shipments from North Louisiana points to New Orleans, instead of charging and collecting ten cents per one hundred pounds (the rate fixed by the Commission.) The ground of complaint is: That the fifteen cent rate charged and collected was the established interstate rate, and alleging that the shipments constituted interstate or foreign transportation, the Commission exceeded its powers in imposing the fines, for as much as the shipments were interstate or foreign in character and not intrastate or local. R., p. 57 to 65).

After answer (R., p. 8) and replication, the case was referred to a special master, who after reporting on the facts and conclusions of law, recommended the dismissal of the bill (R., p. 12). Exceptions to the Master's report (R., pp. 40-41) were duly filed, and after hearing, a decree of the Circuit Court was entered sustaining these exceptions and granting the injunction and other relief prayed for. Appeal was taken to the United States Circuit Court of Appeals, Fifth Circuit. The latter Court decided that on the facts found by the master, the commerce involved in the case was interstate and affirmed the decree of the lower Court (R., p. 112). Wherefore this appeal.

As the decrees of the Circuit Court and the Circuit Court of Appeal rested upon the facts found by the master, it is proper to recite these findings as appear on pages 14 to 18 of the record, as follows:

1. I find that the complainant, the Texas & Pacific Railroad Company, is a railway corporation created under the laws of the United States, and has been



in existence and operation between El Paso, Tex., and New Orleans, Louisiana, as a common carrier of freight and passengers, under its charter, continuously since 1884-5, to the present time.

2. I find that the complainant, the St. Louis, Iron Mountain & Southern Railway Company, is a consolidated railway corporation created under the laws of the States of Arkansas and Missouri, with its legal domicile in the City of St. Louis, State of Missouri, and has owned and operated, since 1892, a line of standard gauge steam railroads, as a common carrier of freight and passengers, from points in said State to Alexandria, in the State of Louisiana.

3. I find that the Kansas City Southern Railway Company owns and, since 1904, has operated a line of standard gauge steam railroads from the City of Kansas City, in the State of Missouri, through the State of Louisiana, as a common carrier of freight and passengers, with its legal domicile in the said City of Kansas City, State of Missouri.

4. I find that all of said railroad companies, in the years 1904 and 1905, were engaged in interstate and intrastate commerce, transporting freight from points within and without the State of Louisiana, to the City of New Orleans, which are subsequently loaded on board of ships and transported to foreign parts and countries.

5. I find that the defendant, the Railroad Commission of Louisiana was created by Articles 283 to 289, inclusive, of the Constitution of Louisiana, adopted in the year 1898, and the amendments thereto.

6. I find that the lines of railroad of the Texas & Pacific Railway Company and of the Kansas City Southern Railway Company connect at Shreveport, Louisiana; and that those of the Texas & Pacific Railway Company and of the St. Louis, Iron Mountain & Southern Railway Company connect at Alexandria, Louisiana.

7. I find that the Railroad Commission of Louisiana, on May 25th, 1905, promulgated and put in effect its Order No. 445, a copy of which is annexed to complainant's bill, marked Exhibit "A," which fixed the freight rates that said railroads were entitled to charge on all intrastate traffic, and that said rates were effective and in force at the date of the shipments in controversy in this cause.

8. I find that in the months of July, August, September and October, 1905, the Urania Lumber Company, L. M. Jones, Bradford Bros., J. T. Adams and H. T. Bradford, delivered to the said St. Louis, Iron Mountain & Southern Railway Company, at Olla, Georgetown and Kelly Stations, on its line of railroad within the State of Louisiana eighteen (18) carloads of staves and poplar logs, consigned to Charles S. Elms and Hub Durselen, at New Orleans (see Exhibit "B" annexed to complainant's bill); that said eighteen carloads of logs and staves were transported by said receiving carrier from said initial stations on its line to Alexandria, and there delivered to its connecting carrier, the Texas & Pacific Railway Company, which transported the same to the City of New Orleans, where the logs and staves were unloaded from the cars on board ship and exported to foreign countries.

9. I find that when said shipments were made, the legal tariff filed with and approved by the Railroad Commission of Louisiana on intrastate shipments of lumber, logs and staves from points on the St. Louis, Iron Mountain & Southern Railway in Louisiana to the City of New Orleans, was ten cents per hundred pounds; and that the legal tariff filed with and approved by the Interstate Commerce Commission on such shipments at that time was twelve cents per hundred pounds.

10. I find that upon the arrival of said eighteen

(18) cars at New Orleans, the Texas & Pacific Railway Company notified the consignees, Charles S. Elms and Hub Durselen, in the usual and customary manner, and that said consignees ordered the Texas & Pacific Railway Company to deliver the freight to certain steamships plying between New Orleans and European ports; and I find that said freights were so delivered as ordered and were received on board said steamships, and exported from the State of Louisiana, and that a freight rate of twelve cents per hundred pounds was charged on said shipments and collected by the Texas & Pacific Railway Company.

11. I further find that in March, 1905, Friedlander & Oliven delivered to the complainant, Kansas City Southern Railway Company, at Leesville, Louisiana, on its line of railroad, three car loads of tank staves, which had been loaded into cars Nos. 7035, 7036 and 6451 of the Texas & Pacific Railway Company to be transported to George Gerdes, consignee, at New Orleans.

The rate on these staves from the initial point of New Orleans, as established by the Railroad Commission of Louisiana, was at the time ten cents per hundred pounds; and the interstate rate fixed by the tariff sheet filed with and approved by the Interstate Commerce Commission for such shipment was fifteen cents per hundred pounds.

12. I find that said three carloads of staves were transported by the Kansas City Southern Railway Company from Leesville to Shreveport, Louisiana, and there delivered to connecting carrier, the Texas & Pacific Railway Company, which hauled the same to the City of New Orleans.

That on arrival of the cars the customary notice was given to consignee, and, thereupon the consignee, in the month of April, 1905, directed said railroad to deliver the freight to steamship "West Point,"

at its Westwego terminal wharf, but the steamship having removed to the city front, the cars were delivered to the Illinois Central Railroad, which, in turn, switched them to the Southern Pacific Railroad, which road switched them to the wharf, where the staves were at last loaded on said steamship and transported to Hamburg, Germany. The Texas & Pacific Railway Company collected freight charges thereon from the consignee at the rate of fifteen cents per hundred pounds.

13. I find that the said George Gerdes, at the date of the shipment of said three carloads of staves, resided in the City of New Orleans, where he was engaged as a ship broker in negotiating for cargo space, rates and attending to shipments for consignors in the United States; and that the said Charles S. Elms and Hub Durselen, consignees of said eighteen carloads, were engaged at New Orleans in the business of exporting staves to foreign countries, and that the staves which they dealt in are not treated, manufactured or changed from the original shape in which they are received at New Orleans for export, and that 98 per cent of the shipments by them at New Orleans are exported to foreign countries.

14. I find that the eighteen cars referred to in Exhibit "B," attached to complainant's bill, and the three carloads consigned to George Gerdes, arrived in New Orleans and were delivered aboard ship for export on the dates following:

Car 11,575 M. P., arrived July 25, 1905, and delivered to ship July 27, 1905.

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Car 937 M. P., arrived October 7, 1905, and delivered to ship Asian October 18, 1905.

Car 2580 M. P., arrived October 7, 1905, and delivered to ship Louisianian, November 2, 1905.

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Car 10,749 I. M., arrived here August 9, 1905, and delivered to ship on October 25, 1905.

Car 7036 T. P., arrived March 30, 1905, ordered transferred to city front and delivered to steamship West Point, April 4th, 1905.

Car 6450 T. P., same dates.

Car 7036 T. P., same dates.

I find in this connection that at the time these shipments were made in 1905, the rules of the Railroad Commission of Louisiana allowed four days' free time for unloading cars after arrival at New Orleans and notification to the consignee, except where the consignments were for export, in which case twenty days

were allowed. That no demurrage was tendered by shipper or consignee or received by the carrier on account of the delays in unloading beyond the four days allowed by said rules. And I find that every one of said shipments paid to the carrier 3-4 of a cent per 100 pounds for unloading charges, this being the same amount charged on all export shipments. I further find that from the time the shipments herein involved moved from the initial points in Louisiana, under the bills of lading they were in the physical custody of the railroad company until arrival at New Orleans, and that, thereafter, they were in the physical custody of the steamships which issued export bills of lading therefor to the shippers of the cargo.

15. I find from the admissions of fact made by the parties herewith returned into Court that the bill of lading marked T. & P. 5560 and the bill marked I. M. 12070 annexed hereto, are samples of the bills of lading on all the shipments made by the St. Louis, Iron Mountain & Southern Railway Company, involved in this case; and I find from the evidence that the bills of lading issued at Leesville by the Kansas City Southern Railway Company for the three carloads of staves consigned to George Gerdes, were substantially in the same form, but that each was endorsed on the back by the station agent with the words "For Export" and were accepted in that form by the shipper.

I further find that said bills of lading in each instance provided for the delivery of the freight from the initial points of shipment to the City of New Orleans, there to be delivered to shipper or consignee's order.

16. I further find that although the bills of lading issued for all of said cars required the carrier to deliver the freight from the initial points of shipments to the City of New Orleans within the limits

of the State of Louisiana, the staves and logs were intended by the shippers to be exported to foreign countries, and were treated by both the shippers and carrier accordingly, the shippers always holding the cars on the railroad track until they could accumulate cargo to fill their export contracts and arrange for transportation, and the railroad company allowing the shippers the usual twenty days' time for delivery, as in case of export shipments, without charging demurrage, which the carrier would have had a right to collect after the expiration of four days, if the shipments had been considered and treated as purely intrastate.

Reference to the bills of lading shows the following: This form of bill of lading is the one prescribed and ordered by the Louisiana Railroad Commission and is *to be used only* upon shipments having both origin and destination within the State of Louisiana, and *must not* be used on interstate shipments (R. P.).

#### • ASSIGNMENT OF ERRORS.

The appellants in the above entitled cases, in connection with their petition for appeal herein, present and file therewith their assignment of errors, as to which matters and things they say that in the record, decrees and proceedings herein there is manifest error and that the United States Circuit Court of Appeals, Fifth Circuit, erred in this, to-wit:

First. That the bill of complaint filed in this cause does not state a case which entitles, or would entitle, the complainants to the writ of injunction, and it, therefore, should not be issued.

Second. That the writ of injunction should not have

been granted to stay proceedings in the State Courts of the State of Louisiana, as the issuance of same would be, and is, in direct violation of Section 720 of the Revised Statutes of the United States.

Third. That this Honorable Court, and the United States Circuit Court, Eastern District of Louisiana, is without jurisdiction to restrain or prevent, by injunction, the institution of a suit, or of several suits, if separately brought against complainants in the State Courts of the State of Louisiana, to recover penalties imposed upon complainants by the Railroad Commission of Louisiana for the violation of its orders, because such suit or suits, when brought, would be suits brought against complainants by the State under Article 286 of the Constitution of the State of Louisiana, and because such restraining order or orders of injunction preventing or prohibiting the institution of such suit or suits against complainants would be, in effect, and operate as an order of injunction against the State of Louisiana, and would have the effect of preventing the State of Louisiana, by injunction, from recovering in a State Court of that State, in a suit or suits which it is made the duty of the Attorney General of that State to bring in his official capacity, penalties imposed by the Railroad Commission of Louisiana for the violation of its orders, which by Article 286 of the Constitution of the State of Louisiana, and which, when recovered, must be paid into the treasury of that State under the terms of Article 288 of said Constitution.

Fourth. That the United States Circuit Court for the Eastern District of Louisiana and this Court are without jurisdiction of and over the matters and things charged



and set forth in complainant's bill herein filed, for the reasons aforesaid, in so far as it is sought to restrain, prevent or prohibit the bringing of suit to recover the penalties already imposed by the Railroad Commission of Louisiana previous to the filing of the bill of complaint herein, which would be brought in the name and for the use and benefit of the State of Louisiana as a sovereign State, for the reason that the State of Louisiana cannot be brought into, or be made a party to any proceeding in a Court of the United States, under the terms and provisions of the eleventh amendment to the Constitution of the United States.

Fifth. That the suit or suits which the injunction issued herein will prevent being brought, are and would be suits for the collection and recovery of penalties imposed by the Railroad Commission of Louisiana under and by virtue of the provisions of the Constitution of the State of Louisiana of a penal nature, and would be and are suits brought by the State of Louisiana through her Attorney General, which it is made his duty to bring, which would enure to its benefit as a State, and the same would be actions or suits in favor of that State to recover money for it as a State in its sovereign capacity, and that, therefore, the Circuit Court of the United States is without jurisdiction to restrain or prevent the same being brought by means of the order of injunction issued herein; and, furthermore, because in any such suit so brought for the recovery of the penalties which had been already imposed by the Railroad Commission of Louisiana previous to the filing of the bill of complaint herein, complainants, defendants therein, would have the right to set up by way of defense the same objection to the legality of the action of

the Railroad Commission of Louisiana in imposing penalties so sued for, which are urged by complainants in their bill of complaint.

Sixth. That complainants are absolutely without right, power or authority to prosecute this suit, for the reason that it is shown in the bill of complaint, and in the amended and supplemental bill of complaint filed herein, that the United States Circuit Court for the Eastern District of Louisiana and this Court would be, and are, under any circumstances, without jurisdiction, and, for that reason, cannot entertain jurisdiction of the same because the amount involved and the matter in dispute, as set out in the bill of complaint is not sufficient to give the Circuit Court of the United States jurisdiction herein, as the same does not exceed the sum of Two Thousand Dollars (\$2,000.00), exclusive of interest and costs; the interests of each complainant in said suit being separate, several and distinct, and not exceeding in amount the sum of Two Thousand Dollars, exclusive of interest and costs.

Seventh. That the evidence adduced herein showed and shows that the defendant, the Railroad Commission of Louisiana, have the right to enter the orders complained of in the bill of complaint, and that it had already in the enforcement of same in the exercise of the authority conferred upon it by the Constitution of the State of Louisiana, acted in the matter by entering the imposing penalties for the violation of such orders by complainants, who had not, up to that time, contested or sought to set aside said orders by suit brought in the manner indicated by Article 284 of the Constitution of the State of Louisiana.

And the Court further erred:

First. In holding and decreeing that on the facts found

by the master that the commerce involved was interstate.

Second. In holding that the shipments referred to in the original and supplemental bill of complaint and in the evidence of the case were not interstate shipments or that the Railroad Commission of Louisiana had no jurisdiction or authority over them or that said Railroad Commission of Louisiana had no power to impose the fines in violation of its orders.

Third. In holding that the intention of the shipper to ship the logs, staves, headings, etc., before and after their arrival in New Orleans from New Orleans to foreign ports or that they were in fact exported, is controlling as against the authority and laws of the State of Louisiana and of the Railroad Commission of Louisiana over persons and property, in the absence of any evidence of a common control, management or arrangement for a continuous carriage or shipment between complainants and any other common carrier, or between the shipper and complainant and the ocean carriers from North and West Louisiana points to foreign ports via New Orleans.

Fourth. In holding as against the Constitution of the United States and against clause 3 of Section 8 of Article 1 of said Constitution, and against the Act of Congress to regulate commerce, as amended June 29, 1906, and April 13th, 1908, under the admitted facts, that there was no common control, management or arrangement, directly or indirectly for a continuous carriage or shipment between complainants or any other common carrier to transport the property from any point within to any point without the State.

Fifth. In failing and refusing to hold that the Railroad Commission of Louisiana had jurisdiction over said

shipments, or that the intention of the shipper could not take it away; and that the said Commission had authority to impose fines upon complainants for violation of its orders, and that the contract of shipment was complete upon delivery to consignees of the property in New Orleans; and that the agency of complainants as forwarders for said shippers could not change the completed contract of shipment; and that the intention of shipper or consignee could not convert the contract for local shipment into a contract for interstate or foreign shipment.

Sixth. In failing and refusing to follow the decision of the Supreme Court of the United States, *Gulf, Colorado & Santa Fe Railway Co. vs. Texas*, 204 U. S. 412, and other cases of equal application and in failing to overrule the exceptions to the master's report and rendering a final decree in favor of defendants, dismissing the original and amended bills of complaint and dissolving the writ of injunction herein issued.

Wherefore, the said appellants pray the Honorable Court to examine and correct the errors assigned and for a reversal of the judgments and decrees of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above entitled case.

#### ARGUMENT.

##### I.

If, upon and after delivery of the staves by the Texas and Pacific at New Orleans to the consignee, the line of separation between Federal power and State power, with respect to both ocean and local transportation and the instrumentalities of commerce, becomes established in fact,

then confessedly, the preliminary movement from North Louisiana points to New Orleans comes within the exclusive authority of the State. For the jurisprudence admits, that:

Wherever a separation in fact exists between transportation service wholly within the State and that between the States, a like separation may be recognized between the control of the State and that of the nation."

*New York ex rel. Penna. vs. Knight*, 192 U. S. 21, 27, citing *Osborne vs. Florida*, 164 U. S. 650; *Pullman vs. Adams*, 189 U. S. 420.

The service rendered by the railway companies is wholly within the State. It has no contractual or necessary relation to foreign transportation. It is manifestly preliminary thereto, independently contracted for, not necessarily connected therewith. Locality therefore determines the jurisdiction, unless it is shown that though the local movement is actually within, it is legally outside the State.

*New York ex rel. Penna. vs. Knight*, 192 U. S. 21, 27; *Coe vs. Errol*, 116 U. S. 517.

Is this local transportation legally outside the State?

Is commerce between the State and foreign nations directly or indirectly affected? Inasmuch as the rates rules and regulations for the inland carriage, whether established by either the State or Interstate Commission, obviously have no necessary relation to or direct connection with the ocean carriage, and could not have because the ocean carriage is admittedly beyond the control of both Commissions, (*Cosmopolitan Shipping Co. vs. Hamburg*

*American Packet Co.*, 13 I. C. C. Rep. 207; *Kemble vs. Boston & Albany Rd. Co.*, 8 I. C. C. R. 110; *In the Matter of Jurisdiction Over Water Carriers*, 15 I. C. R. 205), the most that could be said is that these rates, rules and regulations have an indirect bearing on the ocean transportation, that is to say, foreign commerce, because the local transportation is prior thereto.

## II.

In *Ex Parte McNeil*, 13 Wall. 236-240, Mr. Justice Swayne said:

"In the complex system of polity which prevailed in this country, the powers of government may be divided into four classes: 1. Those which belong exclusively to the State. 2. Those which belong exclusively to the national government. 3. Those which may be exercised concurrently and independently by both. 4. Those which may be exercised by the State, but only until Congress shall see fit to act upon the subject. The authority of the State then retires and lies in abeyance until the occasion for its exercise shall recur \* \* \* The commercial powers lodged by the Constitution in Congress is in part of this character. Some of the rules prescribed in the exercise of that power must, from the very nature of things, be uniform throughout the country. To that extent the power itself must, necessarily, be exclusive. \* \* \* Other powers may well vary with the varying circumstances of different localities. In the latter contingency, the States may prescribe the rules to be observed until Congress shall supersede them."

Accordingly, since Marshall's opinion in *Gibbons vs. Ogden*, 9 Wheat 1, it has been settled, that while a State may not directly regulate foreign and interstate com-

merce, yet, *where Congress has not acted*, State authority is not excluded, since, in many ways, State action *indirectly* affects foreign and interstate commerce without constituting a regulation of it within the meaning of the commerce clause of the Constitution. The cases which hold these views are numerous. A few will suffice: *Pittsburg Coal Co. vs. Louisiana*, 156 U. S. 590, 592; *Anderson vs. U. S.*, 171 U. S. 604; *Hopkins vs. U. S.*, 171 U. S. 578, 594; *Smith vs. Alabama*, 124 U. S. 465, 473; *New York ex rel. Penna. R. vs. Knight*, 192 U. S. 21; *Chicago & N. W. R. vs. Fuller*, 17 Wall., 560, and see a review of cases in *Missouri R. R. vs. Larabee Flour Mills*, 211 U. S. 612, 621, 622, 623. Indeed, it may be safely asserted, that all State regulations intended for the public good, indirectly or incidentally affecting foreign and interstate commerce, among which are the establishment of railroad rates between points within the State, come under the reserved power of the States. As was said in *Cooley vs. Port Wardens*, 12 How. 299:

"The mere grant of such a power (to regulate commerce) to Congress, did not imply a prohibition on the States to exercise the same power; that it is not the mere existence of such a power, *but its exercise by Congress*, which may be incompatible with the exercise of the same power by the States, and that the States may legislate in the absence of congressional regulations"

Citing 4 Wheat 193; 5 Wheat 1, 2 P. 251. See also *Cleveland, C. C. & St. L. R. R. vs. Illinois* 177 U. S. 514.

If this were not so, then every regulation of a local character would be void, and the States rendered power-

less in matters of internal policy and administration because such local regulations incidentally or remotely affect foreign and interstate commerce. Among the Federal laws and regulations of a character incidentally affecting interstate and foreign commerce, may be mentioned the safety appliance act, accident report act, arbitration act, hours of service act. Prior to these enactments there was no prohibition on the States from exercising the same power within their respective boundaries, for all the cases admit that the existence of the same power resided in the several States, subject to congressional action. This has been emphasized in many decisions and recently in *Southern Ry. Co. vs. U. S.*, decided October 30th, 1911, by the United States Supreme Court.

### III.

That the State has power over traffic and the instrumentalities of commerce moving from a point in the State to a port of trans-shipment in the same State ought not to be doubted, although the regulations prescribed by it may indirectly or remotely have some relation to foreign commerce. Nor will it be doubted that Congress may exercise the same power, and that when so exercised by Congress, as the supreme law of the land, the State regulations must give way. The question then is: Has Congress exercised it? That issue must be determined by the Act to Regulate Commerce, Section 1, as amended June 18th, 1910, wherein Congress has recognized what subjects of interstate and foreign commerce are of national importance, from which we expect to show that Congress has studiously abstained from passing any regulation touching the facts of this case.



Among other matters not in issue here, the act to regulate commerce as amended to date applies \* \* \*

"to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or District of Columbia, to any other State, etc \* \* \* and also to the transportation in like manner of property \* \* \* shipped from any place in the United States to a foreign country and carried to such place to a port of transshipment."

Manifestly, the words "in like manner" contained in the last clause refer to the part rail and part water transportation, "under a common control, management or arrangement for a continuous carriage or shipment," contained in the first clause.

*Leonard vs. K. C. S. Ry. Co.*, 13 I. C. C. Rep. 573.

It jumps to the eye that as there is not the remotest connection between the ocean carriers and the railroads appellees with respect to these shipments by means of a through bill of lading, conventional division of charges, terminal arrangements or facilities, terminal contracts, holding-interests, stock bonus, joint-adventure, reciprocal concession, co-operation, or any other means or device evidencing a common control, management or arrangement for a continuous carriage or shipment from North Louisiana points to foreign countries, Federal jurisdiction either under the Constitution or under the Act to Regulate Commerce has not attached.

That the Courts shall not be at liberty to extend by judicial construction the intention of Congress, so clearly and comprehensively expressed in Section 1, but that its application alone should be the basis of inquiry according to the facts of each particular case is further emphasized by the proviso which imposes the following prohibition or limitation :

“That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivery, storage or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory ‘as aforesaid.’ ”

Here, Congress has industriously added the words “as aforesaid” for the very purpose of excluding Federal jurisdiction over the State inland haul of property shipped to a foreign country from any place in the United States and carried from such place to a port of transshipment when, “as aforesaid,” the use of part water and part rail are not “under a common control, management or arrangement, for a continuous carriage or shipment.” To give these words, “as aforesaid,” no weight or meaning is tantamount to striking out of Section 1 the provision for a common control, management or arrangement, etc., and thus impute to the congressional enactment, effects and consequences directly opposed to both the letter and spirit and whole intent, contrary to every rule of statutory construction. And so it is clear that under the proviso Congress has expressly waived jurisdiction over the State inland haul of property carried partly by railroad and partly by water, not shipped to or from a foreign country from or to any State or Territory, “as aforesaid;” that is to say,

"under a common control, management or arrangement for a continuous carriage or shipment." Or to put it in another form and with the emphasis of repetition indulged in by Congress itself; beyond the fact of a common control, management or arrangement for a continuous carriage or shipment between the ocean carrier and the land carrier engaged in transporting passengers or property "wholly within one State," in the words of the proviso, Congress has exerted no jurisdiction.

*New York ex rel. Penna, vs. Knight*, 192 U. S. 27.

The evidence plainly establishes the negative contained in the provisions of the Act to Regulate Commerce. Two separate, distinct and independent contracts exist—one between the shipper or consignee and the ocean carrier (foreign commerce), the other between the shipper and the railroad (intrastate commerce). Not a single fact appears or exists, physical or other, which connects the railroads with the ocean carrier. Nothing appears or exists save the intention of the shippers or consignees to cause the staves to be transported to foreign countries after the contract of inland carriage was completed by delivery to the consignee at New Orleans, and as all intentions and declarations are subject to change, it further appears that it was, in some instances, changed when market conditions justified. And finally, the contract of shipment specially provides that it is not to be used on interstate shipments, but only on intrastate shipments.

#### IV.

Unless it be found that there exists a common control, management or arrangement between the ocean carriers

and the railroad appellees, the State's jurisdiction over the inland transportation ought not to be ousted. That the shippers or consignees intended to have the staves transported to foreign countries either before, upon, or after, delivery to them, is immaterial. An arrangement between the water and rail carriers must exist in fact or by a conclusive presumption, and is independent of any intention or declaration of the shipper or consignee. The intention is not controlling, but the fact of statutory arrangement.

To us, these appear to be closed questions. Copious extracts from familiar opinions become unnecessary. We rest content with a reference to the following:

*Coc vs. Errol*, 116 U. S. 525, 527; *Pittsburg vs. Bates*, 156 U. S. 577; *Diamond Match Co. vs. Ontonagon*, 188 U. S. 82, 96; *New York ex rel. Penna. vs. Knight*, 192 U. S. 21; *Gulf, Colorado & Santa Fe vs. Texas*, 204 U. S. 412; *Larabee Flour Mills vs. Mo. Pac.* 211 U. S. 612.

## V.

It is claimed that *Southern Pacific Terminal Co. vs. Interstate Commerce Commission and E. H. Young*, 219 U. S. 498, holds the contrary and is decisive on this question of jurisdiction. The facts of that case are familiar. We will, however, briefly restate them:

Young, a manufacturer and exporter of meal and cake, leased from the Terminal Company, one of the subsidiary corporations of the Southern Pacific System, a terminal or wharf of that system at the Port of Galveston, the result of which lease was the giving, by the Southern Pacific, of an unlawful preference to Young, over other shippers in

like circumstances. He was exclusively engaged in purchasing his products from points within, and without, the State of Texas, from whence they were transported to the wharf leased by him, where they were directly transhipped in vessels to foreign countries. The wharf was used by no one else and for no other purpose but as shipping facilities in his export trade. Agreeing with the Interstate Commerce Commission, the Court held that, under Section 1 of the Act to Regulate Commerce, interstate jurisdiction extended to railroad terminals and terminal facilities, from whence it followed that the advantage gained by Young under the lease could be restrained; otherwise, either through the organization of separate corporations of one system, or by leasing their terminals to a preferred shipper, or by any other similar device, carriers generally could exempt their terminals from interstate regulation.

This ruling was sufficient to dispose of the case. But the Court noticed one of the contentions which might be claimed to have some bearing here. We quote:

"The last contention advanced is that 'the order of the Commission transcends its jurisdiction, in that it regulates commerce purely State and intrastate, and also purely foreign commerce, neither of which is subject to its authority.'

"In support of this contention it is insisted that the evidence shows the following facts: The cake and meal purchased by Young are bought by him in *Texas, Oklahoma, Louisiana and Arkansas*, but chiefly in Texas, and shipped to him on bills of lading and waybills, *showing the point of origin in those States* and the destination at Galveston. The purchases are made for export, there being no consumption of the prod-

ucts at Galveston. His sales to foreign countries are sometimes for immediate and sometimes for future delivery, irrespective of whether he has the product on hand at Galveston. At times he has it on hand. At times, therefore, orders must be filled from cake to be purchased in the interior or then in transit to him. When the cake reaches Galveston it is ground into meal and sacked by Young, and for the meal thus ground and such meal as has been brought to his customers he takes out ships' bills of lading made to his order.

"This evidence establishes, appellants contend, that the transit of the cake and meal is absolutely ended at the leased premises at Galveston, and that it is 'a final point of concentration and manufacture, the cotton-seed cake being there manufactured into meal and sacked for export.' *But this does not distinguish between the meal and the cake, nor between the meal that is purchased at points outside of Texas and directly exported, from that so purchased and manufactured on the wharves of the Terminal Company. Nor does it take account of the fact that the wharves were intended for shipping facilities, a means of transition from land carriage to water carriage.* It is manifest, as we have said, that, to make the wharves manufacturing or concentrating points for one shipper and not for all, is to give that shipper a preference. And, being a preference, the traffic necessarily comes under the jurisdiction of the Interstate Commerce Commission. In other words, the manufacture or concentration on the wharves of the Terminal Company are but incidents, under the circumstances presented by the record, in the trans-shipment of the products in export trade, and their regulation is within the power of the Interstate Commerce Commission. To hold otherwise would be to disregard, as the Commission said, the

substance of things and make evasions of the Act of Congress quite easy. It makes no difference, therefore, that the shipments of the products were not made on through bills of lading, or whether their initial point was Galveston or some other place in Texas. They were all destined for export, and, by their delivery to the Galveston, Harrisburg & San Antonio Railway, they must be considered as having been delivered to a carrier for transportation to their foreign destination, *the Terminal Company being a part of the railway for such purposes*. The case, therefore, comes under *Coe vs. Errol*, 116 U. S. 577, where it is said that goods are in interstate, and necessarily as well in foreign commerce when they have 'actually started in the course of transportation to another State, or delivered to a carrier for transportation.' *In G. C. & S. F. Ry. Co. vs. State of Texas*, 204 U. S. 403, *the facts are different and the case is not apposite.*"

That case and this one materially differ. Notwithstanding the lease to Young of (as the Court puts it) "a part of the railway," a terminal wharf, directly connecting with an ocean carrier, the Terminal or Railway Company and its terminal wharf, still remained such in point of fact. Substitute the Terminal or Railway Company for Young, and you will have a railway company possessed of and operating a terminal wharf as a part of its line of railway, receiving and carrying property by rail from Texas and other State points, for direct delivery to a connecting ocean carrier. Because the terminal wharf or "part of the railway" line was under Young's control and operation and devoted exclusively to railway transportation of his products in virtue of his lease, that fact does not change the true state of things. So, how could there be delivery from

the terminal wharf (sub nom. Young), to the vessel unless there was expressly or impliedly, a *transit arrangement* in export trade between the operators of each? Unlike this case, no outside agency intervened. The whole situation, in law and in fact, conclusively established a common control, management or arrangement between the rail-carrier (sub nom. Young), and the ocean carrier, thus forming a continuous unbroken line of transportation from point of origin to ultimate destination. The manufacture and sacking at the wharf, as held, were but incidents in the continuity of that journey.

It was also contended that some of the meal was actually purchased and manufactured in Galveston, but as the Court said, the Act to Regulate Commerce would still apply, because without distinguishing "between the meal that is purchased at points outside of Texas and directly exported, from that so purchased and manufactured on the wharves of the Terminal Company," and "the fact that the wharves were intended for shipping facilities, a means of transition from land-carriage to water-carriage," the wharves were a railroad terminal, over which Interstate Commerce Commission is expressly given jurisdiction by the terms of the Act to Regulate Commerce.

In this case neither the railroad companies nor the consignees had the exclusive ownership, possession or control, by lease or otherwise, of the public docks. Nor, does it appear that the deliveries were made by the Texas & Pacific directly to any wharf terminal or "part of the railway line" of the Texas & Pacific Railway. To bring this case under the facts of the Young case, you must supply evidence. You've got to say that the situation and the facts lead to the same conclusion; but this you cannot say, with-



out erroneously finding that the city's public docks or any part thereof covering a distance of several miles of the river front, used for all kinds of commerce and under the control and jurisdiction of the State through an administrative board, are exclusively the railway terminals of the Texas & Pacific Railway Company. So the case comes to this.

1. In the *Young case*, the essential and controlling fact of foreign destination or delivery to a carrier for foreign transportation, and therefore foreign commerce is the control and possession of the terminal wharf as a shipping facility of a railroad or "means of transition from land carriage to water carriage" for the transportations of products in export or in import trade. That fact is absent here.

2. From that fact, there flows a conclusive presumption of an arrangement or common control for a continuous carriage or shipment between rail and water carriers. That presumption cannot be indulged in here because the fact upon which it is based does not exist.

If Young had no such or similar advantage, the transportation of his products under local bills to Galveston would govern the character of the shipment, and his intention to export them would then come into play under the *204 U. S. case*. The character of Young's shipments was properly determined foreign commerce in fact, because of the specific designation in the bill of lading "of a part of the railway" or wharf terminal as a means for trans-shipment to foreign countries. But a shipment of goods at the initial State point to contract destination within the State without any designation for trans-shipment as to any facility or means of transition from land carriage to ocean carriage, does not of itself evidence the fact nor is it a pre-

sumption of an arrangement between rail and water carriers because the shipper or consignee intends to export. The grave consequences and uncertainties, to say nothing of the many unmentionable absurdities, resulting from a subordination of facts constituting National or State commerce to the bare intention or declaration of a shipper or consignee, demanded the wisdom of the Court in 204 U. S. 403.

It is, therefore, clear, that in the absence of anything going to show an arrangement in fact or one unavoidably deducible from a direct physical connection between rail and ocean carrier for a continuous carriage or shipment, or in the absence of any specific designation of a railroad terminal as a means for trans-shipment in a continuous journey which *of itself* is presumptive and conclusive evidence of such an arrangement, the case falls within the facts and principles of 204 U. S. 403, and kindred decisions above cited.

The distinction between a local shipment to a consignee who intends to trans-ship and who carries out that intention, and a local shipment to a railroad terminal connecting with an ocean carrier for foreign transportation, might seem nice, but it is not a whit nicer than the distinction pointed out by the United Supreme Court, in 204 U. S. 403, between the case of a passenger who buys a ticket from one point within a State to another point within the same State, where no obligation is imposed upon the carrier to deliver him to a connecting carrier for interstate or foreign carriage, and a passenger who buys a ticket from one point within the State to another point within the same State where the carrier specially contracts with him to de-

liver him to a connecting carrier for interstate or foreign transportation. *Coc vs. Errol*, 116 U. S., *supra*, and other decisions cited clearly exhibit these distinctions which should be recognized and applied here.

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*Attorney General of Louisiana.*

**WYLIE M. BARROW,**  
*Assistant Attorney General,*  
*For Appellant.*

**E. HOWARD MCCALED,**  
*Of Counsel.*



# Supreme Court of the United States.

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OCTOBER TERM, 1911.

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**No. 668**

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RAILROAD COMMISSION OF LOUISIANA AND  
WALTER GUION, ATTORNEY GENERAL  
OF LOUISIANA,

APPELLANTS,

VERSUS

TEXAS & PACIFIC RAILWAY COMPANY, ST. LOUIS,  
IRON MOUNTAIN & SOUTHERN RAILWAY  
COMPANY, AND KANSAS CITY  
SOUTHERN RAILWAY  
COMPANY,

APPELLES.

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Come the Appellants and move the Honorable Court to advance this cause upon the docket and hear it, at as early a day as the convenience of the Court will permit, and, for reasons therefor, mover states:

Appellees, railroad companies, are engaged in interstate and intrastate commerce, transporting freight and passengers from and to points within and without the State

of Louisiana. The lines of the Kansas City Southern connect with the Texas & Pacific at Shreveport, Louisiana; those of the St. Louis, Iron Mountain & Southern with the Texas & Pacific at Alexandria, Louisiana, and the Texas & Pacific Louisiana terminus is at New Orleans.

Appellant, Railroad Commission of Louisiana, is an administrative board created by Articles 283 to 289 of the Louisiana Constitution of 1898, having power and jurisdiction over common carriers and other quasi-public corporations as to intrastate rates and service, and Walter Guion, Appellant, is Attorney General of Louisiana, (Transcript, pp. 58, 73.)

By its Orders No. 445 (Transcript, pp. 66, 70) and No. 410, the rates on lumber, logs and staves in carload lots from Louisiana points on the St. Louis, Iron Mountain & Southern and Kansas City Southern to New Orleans were fixed by the Railroad Commission of Louisiana, according to Western Classification No. 37, at 10 cents per 100 pounds, and by its Order No. 419 (Transcript, p. 70), establishing joint rates, when there are two or more lines having through connections between any two points in Louisiana, the lowest rate established between such points shall be charged by the other lines accepting freight for transportation between said points. The tariff rate filed with and approved by the Interstate Commerce Commission for shipments from such points on the lines of plaintiffs for interstate movement was 12 cents per 100 pounds from stations on the St. Louis, Iron Mountain & Southern, and 15 cents per 100 pounds from stations on the Kansas City Southern.

Shipments of 18 carloads of staves and logs were made by several persons at Olla, Georgetown, and Kelly, La.,

stations on the St. Louis, Iron Mountain & Southern, and consigned to Elms & Durselen, New Orleans, and 4 carloads of staves and logs were made by Friedlander & Oliven, at Leesville, La., a station on the Kansas City Southern, and consigned to George Gerdes, New Orleans. Each and all of these shipments were transported over Appellees' lines and delivered to the consignees at New Orleans, the haul being entirely within the limits of the State. Local bills of lading to New Orleans were issued for each shipment by the initial carrier in the usual form.

The cars were held by the railroad companies on the Texas & Pacific Railway tracks in New Orleans for 14 days in most cases, 22 days in four cases, and in one case 75 days, under instructions from the consignees, who ordered the Texas & Pacific Railway to deliver them to certain steamships, to be exported, excepting in the case of the Gerdes consignment, which was unloaded and delivered to the steamship by Gerdes' agent, the Texas Terminal Company. In all cases they were, in fact, delivered, unloaded and exported.

Instead of charging 10 cents per 100 pounds for these shipments under local bills to New Orleans, the railroads charged and collected 12 and 15 cents per 100 pounds, respectively, the rate for interstate movement. Whereupon, after due notice and hearing, by its Orders 476 and 477, the Railroad Commission imposed fines aggregating eight thousand dollars on the railroad companies (Transcript, pp. 69, 72) for violation of the 10-cent per 100 pounds rate order. To enjoin the collection of the fines and the imposition of penalties for future non-observance of Orders 410, 419, 445, in respect to and in connection with shipments where the shipper or consignor or con-

signee intends to tranship to foreign countries after the local contract of carriage is at an end, this bill was brought, which substantially alleges that, as these shipments were intended for export, under the Commerce Clause of the Constitution, the railroads were justified in charging and collecting the interstate rate, and, therefore, the Railroad Commission exceeded its jurisdiction in applying its orders to these and all similar shipments subsequent to the imposition of said fines.

A preliminary injunction issued, and, after due hearing in the Circuit Court, a final decree was entered perpetuating the injunction, as prayed for, and upon an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, said decree was affirmed.

In addition to the question as to the validity of Orders 476 and 477 of the Railroad Commission of Louisiana, imposing fines upon the Appellees and enjoined by the decrees appealed from herein, this case involves the validity of Orders 410, 419 and 445 of said Commission fixing joint rates on shipments of logs, lumber and staves from North and West Louisiana points to New Orleans, La., under local bills of lading, where the shipper intends to export said commodities after their arrival in New Orleans, and which orders, when so applied and construed, were enjoined by the decrees herein. The Circuit Court, and the Circuit Court of Appeals concurring with said Circuit Court in affirming the decrees herein, decided that shipments originating under a local bill of lading at points in a State and carried to another point in the same State, where the shipper at the point of origin, or the consignee, intends to tranship out of the State to foreign countries after the contract of intrastate carriage is completed, are



interstate or foreign commerce; and any rule or order of the State Commission, such as Orders 410, 419 and 445, when so applied to such shipments under the shippers' intention at point of origin in the State, are void, and should be enjoined as violative of the Commerce Clause of the Federal Constitution.

Movers show that said suit was filed in the Circuit Court on December 4th, 1905 (Transcript, p. 57), and, under the preliminary injunction which issued, and was perpetuated by the decrees herein appealed from, said railroad companies are thereby authorized to, and do, charge 12 and 15 cents per 100 pounds, instead of 10 cents per 100 pounds, and said Orders 410, 419 and 445 have become, still are, and will continue to be suspended until their validity, as construed and applied to shippers' intention, has been finally determined by this Court. The suspension of said orders aforesaid during the course of this litigation, covering a period of approximately six years, movers believe, has worked a hardship upon the public, and will continue to do so until the matter is settled by Your Honors.

And movers finally show that the issues herein are of great interest and pressing importance and concern to the public, affecting, as they do, all shipments originating in a State to the seaboard or to seaport towns in the State, and the operations of the Government of Louisiana will be embarrassed by delay so long as they remain undetermined by this Court.

Respectfully submitted,

WALTER GUION,  
*Attorney General of Louisiana.*  
 E. HOWARD McCALEB,  
*Of Counsel for Appellants.*

TO MESSRS. HOWE, FENNER, SPENCER & COCKE AND  
B. J. MAYER,

*Solicitors and Counsel for the Texas & Pacific  
Railway Company;*

MESSRS. HUDSON, POTTS & BERNSTEIN,

*Solicitors and Counsel for the St. Louis, Iron Moun-  
tain & Southern Railway Company;*

MESSRS. ALEXANDER & WILKINSON,

*Solicitors and Counsel for the Kansas City South-  
ern Railway Company,*

*Appellees in the Above Entitled Cause:*

You are hereby notified that the Appellants in the above named cause will, on Monday, the 2nd day of October, 1911, at the meeting of the Supreme Court of the United States on that day, or as soon thereafter as counsel can be heard, submit for the consideration of the Court the foregoing motion.

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*Solicitors and Counsel for Appellants.*

E. HOWARD McCALEB, being duly sworn, deposes and says: That, on the . . . day of September, 1911, the foregoing motion to advance was served upon Howe, Fenner, Spencer & Cocks and B. J. Mayer, Attorneys for the Texas & Pacific Railway Company; Hudson, Potts & Bernstein, Attorneys for the St. Louis, Iron Mountain & Southern Railway Company; and on Alexander & Wilkinson, Attorneys for the Kansas City Southern Railway Company.

Sworn to and subscribed before me  
this . . . day of September, 1911.

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